Practical Guides and Tools

euaa
EUROPEAN UNION
AGENCY FOR ASYLUM

Practical Guide on Subsequent Applications

March 2026

Practical Guide on Subsequent Applications

March 2026

On 19 January 2022, the European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA). All references to EASO, EASO products and bodies should be understood as references to the EUAA.

Manuscript completed in March 2026

Second edition

Luxembourg: Publications Office of the European Union, 2026

Print ISBN 978-92-9418-481-8 doi: 10.2847/7516134 BZ-01-26-019-EN-C

PDF ISBN 978-92-9418-480-1 doi: 10.2847/4965647 BZ-01-26-019-EN-N

About the guide

Why was this guide created? The mission of the European Union Agency for Asylum (EUAA) is to facilitate and support the activities of EU Member States and the Schengen associated countries (EU+ countries ([1])) in the implementation of the Common European Asylum System (CEAS). In accordance with its overall aim of promoting the correct and effective implementation of the CEAS and of enabling convergence, the EUAA develops common operational standards and indicators, guidelines and practical tools.

How was this guide developed? This guide was created by experts from across the EU, with valuable input from the European Commission, the United Nations High Commissioner for Refugees and the European Council on Refugees and Exiles ([2]). The development was facilitated and coordinated by the EUAA. Before its finalisation, a consultation on the guide was carried out with all EU+ countries through the EUAA Asylum Processes Network. We would like to extend our thanks to the members of the working group who prepared the drafting of the second edition of this guide: Frédéric Bernard, Evdokia Gkouma, Stephen Hand, Anni Loikkanen, Matteo Mura, Camilla Odin and David Riché. The guide was adopted by the EUAA Management Board in March 2026.

Who should use this guide? This guide is primarily intended for asylum case officers, interviewers and decision-makers, as well as policymakers in the national determining authorities. Additionally, this tool is useful for quality officers and legal advisers, along with any other person working or involved in the field of international protection in the EU context.

How to use this guide? The guide is structured in three parts.

1. Procedural rules, related to the making, registering and lodging of a subsequent application, the admissibility procedure of a subsequent application, the right to remain and its exceptions.

2. Preliminary examination, including aspects such as the situation in which new elements are presented and what ‘significantly increase the likelihood’ or ‘relate to an inadmissibility ground previously applied’ means.

3. Subsequent applications in particular situations, such as:

- after a decision to reject the previous application as unfounded, manifestly unfounded or inadmissible;
- after the withdrawal of an application; following a rejection based on an exclusion ground, following the withdrawal of international protection status;
- while an appeal against the decision concerning the previous application is still pending;
- repeated subsequent applications;

([1]) The 27 EU Member States and Iceland, Liechtenstein, Norway and Switzerland.
([2]) The finalised guide does not necessarily reflect the positions of the United Nations High Commissioner for Refugees.

- after the rejected applicant has left the territory or territories of the Member State(s);
- after the determination of the Member State responsible.

This guide should be used in conjunction with:

- EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.
- EUAA, *Practical Guide on Qualification for International Protection*, 2026, https://www.euaa.europa.eu/publications/practical-guide-qualification-international-protection-2026.
- EUAA, *Operational Standards and Indicators on the Asylum Procedure,* https://www.euaa.europa.eu/publications/operational-standards-indicators-asylum-procedure and *Operational Standards and Indicators on Vulnerability-related Aspects in the Asylum Procedure*, https://www.euaa.europa.eu/publications/operational-standards-indicators-vulnerability-aspects-asylum-procedure, November 2025.
- EUAA, *Practical guide on the registration and lodging of applications for international protection*, December 2025, https://www.euaa.europa.eu/publications/practical-guide-registration-lodging.
- EASO, *Practical Guide on the Implementation of the Dublin III Regulation: Personal interview and evidence assessment,* 2018, https://www.easo.europa.eu/sites/default/files/EASO-Practical-guide-on-the-implementation-of-the-Dublin-III-Regulation-personal-interview-evidence-assessment.pdf.

Some of the EUAA practical guides and tools to which this practical guide refers will be published and/or progressively updated between 2025 and 2027. The updates will align the publications with the legislative instruments of the Pact on Migration and Asylum. Once published, the publications will be available online along with all other EUAA products on the EUAA website at https://euaa.europa.eu/practical-tools-and-guides.

How does this guide relate to national legislation and practice? This is a soft convergence tool and is not legally binding. It reflects commonly agreed standards and incorporates dedicated space for national variances in legislation, guidance and practice

.

Disclaimer

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.

Following an initial period of implementation of the Pact, this document may require updating, as needed.

Contents

List of abbreviations **7**

Introduction **9**

1. Procedural rules **10**

1.1. Defining subsequent applications 10

1.1.1. What are subsequent applications? 10

1.1.2. Why subsequent applications? 11

1.1.3. Making further representations 11

1.1.4. Information sharing with other Member States 13

1.2. Making, registering and lodging a subsequent application 18

1.2.1. General principles 18

1.2.2. Guarantees for the applicants 19

1.2.3. Derogations from the guarantees 21

1.2.4. Obligations of the applicant 22

1.2.5. Making a subsequent application 23

1.2.6. Registering a subsequent application 23

1.2.7. Lodging a subsequent application 24

1.3. Admissibility examination of a subsequent application 25

1.3.1. Timeframes 25

1.3.2. Submission of facts and evidence 26

1.3.3. Conducting the admissibility examination 27

1.4. The right to remain in case of subsequent applications 29

1.4.1. Exception to the right to remain during the administrative procedure 29

1.4.2. Exceptions to the right remain during the appeal procedure 30

2. Preliminary examination **32**

2.1. What are 'new elements'? 32

2.1.1. When can the elements be considered new? 32

2.1.2. Three scenarios in which new elements can be presented 36

2.2. What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean 38

2.2.1. Significantly increase the likelihood 38

2.2.2. Relate to an inadmissibility ground previously applied 46

2.3. Conclusion of the preliminary examination 49
3. Subsequent applications in particular situations 50
3.1. Following a rejection of the previous application as unfounded 50
3.2. Following a rejection of the previous application as manifestly unfounded 51
3.3. Following the granting of international protection by another Member State 52
3.4. Following the withdrawal of an application 52
3.4.1. The previous application was declared as explicitly or implicitly withdrawn 53
3.4.2. The previous application was rejected as unfounded or manifestly unfounded 53
3.4.3. The application was suspended 54
3.5. Following a rejection based on an exclusion ground 54
3.6. Following the withdrawal of international protection status 55
3.6.1. Cessation 55
3.6.2. Withdrawal of international protection 56
3.6.3. Absence of a beneficiary for international protection during the withdrawal process 58
3.7. While an appeal against the decision concerning the previous application is still pending 59
3.8. Repeated subsequent applications 59
3.9. After the rejected applicant has left the territory of the Member States 60
3.10. After the determination of the Member State responsible 61
3.10.1. The Asylum and Migration Management Regulation 61
3.10.2. Subsequent application in the Member State responsible 62
3.10.3. Subsequent application in the requesting Member State 62

List of abbreviations

Abbreviation	Definition
AMMR	**Asylum and Migration Management Regulation** — Regulation 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations 2021/1147 and 2021/60 and repealing Regulation 604/213
APR	**Asylum Procedure Regulation** – Regulation 2024/1348 of the European Parliament and of the Council of 14 May 2024 on establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
CJEU	Court of Justice of the European Union
COI	country of origin information
EASO	European Asylum Support Office
EU	European Union
EU+ countries	EU Member States and the Schengen associated countries Iceland, Liechtenstein, Norway and Switzerland
EUAA	European Union Agency for Asylum
Eurodac Regulation	Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council
Member States	EU Member States

Abbreviation	Definition
QR	**Qualification Regulation** — Regulation 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council

Introduction

Subsequent applications pose a challenge to EU+ countries, in terms of both numbers and content. Following the surge of subsequent applications that marked the period 2016-2021 and informed the first edition of this guide, subsequent applications have been accounting, in average, for 9 % of the total applications since 2020.

Next to the relatively high numbers and despite its apparent simplicity, the assessment of subsequent applications is actually complex and can give rise to difficulties. The exact assessment differs depending on the circumstances of the previous application and the way it was concluded. With the new definition of subsequent applications in the Asylum Procedure Regulation (APR) ([3]), Member States will also need to examine subsequent applications following a final decision on a previous application in another EU+ country. As a result, assessing a subsequent application can raise intricate legal questions and requires stronger cooperation among Member States.

This practical guide is based on the legal provisions of the APR and other legal instruments of the CEAS, including the jurisprudence of the Court of Justice of the European Union (CJEU) ([4]), and is underpinned by the pillars of the Refugee Convention ([5]). It aims at providing case officers with guidance on the registration and examination processes as well as on the special procedural rules for assessing subsequent applications.

Chapter 1 explains what a subsequent application is. It highlights the specific attention points at the time of the making, registering and lodging of a subsequent application, and lays out the procedural aspects of the admissibility phase. The chapter ends with the topic of the right to remain and its exceptions.

Chapter 2 explores the content of the preliminary examination during the admissibility procedure: different scenarios in which new elements can be presented; how 'new elements' should be defined; and how to assess whether the new element significantly adds to the likelihood of the applicant qualifying as a beneficiary of international protection.

The final chapter examines the particularities of the assessment depending on the specific situations in which a subsequent application was submitted and/or how the previous one was concluded.

([3]) Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401348. See Article 3(19).

([4]) These legal instruments include the Qualification Regulation, Reception Directive (recast), the Asylum and Migration Management Regulation and the Eurodac Regulation.

([5]) UN General Assembly, *Convention relating to the status of refugees*, Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, https://www.refworld.org/legal/agreements/unga/1951/en/39821 and *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, https://www.refworld.org/legal/agreements/unga/1967/en/41400, (referred to in EU asylum legislation and by the CJEU as 'the Geneva Convention').

1. Procedural rules

1.1. Defining subsequent applications

1.1.1. What are subsequent applications?

The APR defines a 'subsequent application' as

> *a further application for international protection made in any Member State after a final decision has been taken on a previous application, including cases in which the application has been rejected as explicitly or implicitly withdrawn* ([6]).

'Final decision' means a decision on whether or not an applicant is granted refugee status or subsidiary protection pursuant to Qualification Regulation (QR) ([7]) that is no longer subject to an appeal procedure or has become final in accordance with national law including the situation when the applicant has left the territory of the Member States. This is irrespective of whether the applicant has the right to remain ([8]). The definition also includes rejections due to inadmissibility or to implicit or explicit withdrawal, as well as decisions granting refugee status and subsidiary protection.

If the applicant puts forward elements before the decision becomes final, these will constitute further representations in the ongoing procedure and will not result in a subsequent application. For more information on this, see Section 1.1.3. Making further representations.

The CJEU clarified that the final decision must be taken in one of the 26 Member States of the European Union applying the EU provisions on qualification for international protection ([9]), thus excluding Denmark, as well as Norway and Iceland that are not Member States ([10]).

([6]) Article 3(19) APR.

([7]) Regulation 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401347.

([8]) Article 3(8) APR.

([9]) Judgment of the Court of Justice of 19 December 2024, *N. A. K. and Others* v *Germany*, C-123/23 and C-202/23, EU:C:2024:1042, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62023CJ0123&qid=1770988282859. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4755.

([10]) This interpretation was provided by the CJEU when ruling on the following cases governed by the previous legal framework: Judgment of the Court of Justice of 20 May 2021, *L.R. v Germany*, C-8/20, EU:C:2021:404, https://eur-lex.europa.eu/legal-content/EN/SUM/?uri=CELEX%3A62020CJ0008_RES&qid=1770988848198. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1796; CJEU, Judgment of the Court of

There are no time limits to submit a subsequent application. Conversely, there is no statutory limit to considering a final decision 'final'. This means that only the first application for international protection filed by a person will result in a first 'final decision'. Any new applications after the first one will be considered a subsequent application, no matter how long it has passed since the conclusion of the previous asylum procedure.

The APR sets out the examination framework within which a subsequent application should be assessed. In particular, it stipulates the minimum conditions for the preliminary examination of a subsequent application in order to take a decision on its admissibility ([11]). The regulation also provides the procedural rules that apply during the preliminary examination of the admissibility procedure (see Section 1.2 Making, registering and lodging a subsequent application' and Section 1.3 Admissibility procedure of a subsequent application) and the specific exceptions from the right to remain on the territory of the host Member State ([12]), always taking into account the core principle of *non-refoulement* ([13]) in accordance with the obligations placed on Member States by international and EU law (see Section 1.4 The right to remain in case of subsequent applications).

1.1.2. Why subsequent applications?

The notion of subsequent application included in the APR derives from the recognition that there might be reasons why an applicant may wish/need to raise a new claim / new elements related to a previously existing claim for international protection following a previous decision. A subsequent application may be needed in situations where a significant change arises in the applicant's personal circumstances or in the situation in their country of origin, regardless of the time that may have passed since the issuance of the final decision. The possibility to make a subsequent application is crucial to upholding the principle of *non-refoulement*. EU+ countries are obliged under international law to ensure that applicants are not sent to a country in breach of the principle of *non-refoulement*.

1.1.3. Making further representations

The APR provides that:

> *An application made where a final decision on a previous application by the same applicant has not yet been taken shall be considered to be a further representation and not a new application.*

Justice of 22 September 2022, *SI and Others* v *Germany*, C-497/21, EU:C:2022:721, https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:62021CJ0497&qid=1770989017968&rid=2. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2791. Pending confirmation from the Court that this interpretation remains valid under the new legal framework, the abovementioned judgments are still relevant.

([11]) Article 55 APR.

([12]) Articles 10(3) and Article 10(4)(a0 and (b) APR.

([13]) '[A] core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or punishment or any other human rights violation.', excerpt from EMN Glossary, definition of *non-refoulement*, https://www.emn.lt/entries/glossary/?letter=N.

> *That further representation shall be examined in the Member State responsible in the framework of the ongoing examination in the administrative procedure or in the framework of any ongoing appeal procedure in so far as the competent court or tribunal may take into account the elements underlying the further representation*. ([14]).

A subsequent application comes after a final decision has been taken on the previous application and is subject to a preliminary examination as to whether new elements have arisen or have been presented ([15]). No similar requirements apply to situations where an applicant makes a 'further representation' before a final decision on the ongoing application has been taken, although such 'further representation' is to be considered as a submission of arguments or elements in the form of an application ([16]). These elements should be considered as additional – or 'further' – representations and examined within the framework of the ongoing examination, either in the administrative procedure or, if an administrative decision refusing international protection has already been delivered, during an appeal process ([17]). Therefore, if it is established that the previous application is still pending or that any outstanding issues could be brought forward in the context of an appeal, these should be examined as further representations in the context of the pending application or appeal.

Article 55(1) APR defines the difference between a further representation and a subsequent application. It is up to the competent authority of the Member State to ascertain whether the previous proceedings are pending in its own Member State or in another Member State and whether the examination of the new elements can be included therein. When the previous application was submitted in another Member State, the competent authority should contact that Member State as soon as possible. If it is confirmed that a final decision was issued and that Member State is no longer responsible for examining the application, the determining authority can proceed to examine the admissibility of the subsequent application in view of the requirements of the preliminary examination as set forth in the APR ([18]), to determine if new elements or findings have arisen or have been presented. On the other hand, if the final decision is yet to be taken or has been taken but that Member State is the one responsible to examine the new application, the person should be transferred to the responsible Member State for the continuation of the procedure, with the submitted elements constituting further representations in the ongoing examination. See Section 3.7 While an appeal against the decision concerning the previous application is still pending.

([14]) Article 55(1) APR.
([15]) Article 55(3) APR.
([16]) Article 55(1) APR.
([17]) The CJEU has clarified the methods for the examination of arguments and evidence as 'further representations' in the application of Articles 40(1) and 46(3) Directive 2013/32/EU, https://eur-lex.europa.eu/eli/dir/2013/32/oj/eng. See Judgment of the Court of Justice 4 October 2018, *Ahmedbekova*, C-652/16, ECLI:EU:C:2018:801, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0652&qid=1771834522782. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=519.
([18]) Article 55(3) APR.

1.1.4. Information sharing with other Member States

With the modified definition of subsequent applications ([19]), Member States will receive and, if responsible, examine subsequent applications that follow a final decision taken in another Member State. The sections below explore the information that the Member State responsible will find in Eurodac, the obligation to exchange information between Member States and the standard form to be used for exchanging information as per the Asylum and Migration Management Regulation (AMMR) ([20]).

(a) Information in Eurodac

After the registration of the application, Member States will receive information from the European Asylum Dactyloscopy Database (Eurodac) ([21]) which stores personal information and compares biometric data with existing records for applicants of international protection among others ([22]). Eurodac facilitates the determination of the Member State responsible for examining an application for international protection. Also when your Member State is the responsible Member State, Eurodac will provide indications if the application has to be considered as a subsequent application. The following information is included in the database, among other:

- Fingerprints and facial images.
- Date and place where the application for international protection was made.
- Identity data: name, surname, previously used names and aliases, nationality, date and place of birth, gender.
- Type and number of ID or travel document and a scanned copy of ID or travel document.
- Member State responsible for the examination of the application or Member State of relocation.
- Date on which the person left the territory of the Member States.
- Date on which the person was removed from the territory of the Member States.
- The fact that the application has been rejected where the applicant has no right to remain and has not been allowed to remain.

([19]) Article 3(19) APR.

([20]) Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, 2024/1351, 22.5.2024), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401351.

([21]) Established by Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L 2024/1358, 22.5.2024), https://eur-lex.europa.eu/eli/reg/2024/1358/oj/eng, (Eurodac Regulation).

([22]) Data also registered in the database for persons who fall under the EU or national resettlement schemes, benefit from temporary protection, crossed the external borders irregularly, were disembarked following search and rescue operations and were apprehended staying illegally.

- The fact that that a decision rejecting an application following the examination in the border procedure as inadmissible, unfounded or manifestly unfounded or a decision declaring an application as implicitly or explicitly withdrawn has become final.
- The fact that international protection has been granted.

Eurodac contains the information that a negative decision has become final only if it was issued in the border procedure. Also, the database does not include any information on the grounds mentioned by the applicant and the relevant elements assessed by the determining authority. Therefore, Member States need to obtain the relevant information from each other directly through DubliNet.

(b) The obligation to exchange information

The CJEU ruled on the obligation to exchange information between competent authorities in a situation where another Member State previously granted refugee status to the same applicant.

CJEU, 2024, *QY* ([23])

The Court noted that '**in light of the principle of sincere cooperation …** and in order to ensure, as far as possible, the **consistency of the decisions** taken by the competent authorities of two Member States on the need for international protection of the same third-country national or stateless person, … the competent authority of the Member State called upon to decide on the new application **must, as soon as possible, initiate an exchange of information'** with the other Member State. (paragraph 78, emphasis added)

'Th[is] exchange of information is intended to ensure that the authority of the Member State to which the new application has been made is in a position to proceed **on a fully informed basis** with the checks which it is required to carry out under the international protection procedure.' (paragraph 79, emphasis added).

In line with the *QY* judgment, Member States must communicate and exchange relevant information to conduct the preliminary examination also in the case of subsequent applications, if this is needed to assess whether new elements have arisen or have been presented.

Article 51 of the AMMR sets out the mechanism for requesting information and provides a clear structure for this information sharing. The CJEU ruling in *QY* establishes a duty to use that mechanism whenever the circumstances require it to conduct the examination on a fully informed basis. Article 51(3) AMMR explicitly states that, if 'it is necessary for the examination of the application for international protection', Member States 'may request information' from

([23]) Judgment of the Court of Justice of 18 June 2024, *QY* v *Germany*, C-753/22, EU:C: 2024:524, paragraphs 78-79, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62022CJ0753_RES&qid=1770989817054&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4339.

another Member State regarding the grounds mentioned by the applicant in their previous application and the grounds of any decisions taken in another Member State concerning the applicant. In addition, Member States may request any other information necessary 'to establish whether new elements have arisen or have been presented by the applicant' taking into account the principle of necessity and proportionality. Member States may refuse to respond to such a request only if communicating that information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. The applicant must be informed in advance by the requesting Member State about the specific information requested and the reason for that request but they do not need to consent to the request ([24]). The information transmitted received must be included in the individual's file in each Member State ([25]).

(c) Standard form for exchange of information

The request for information is to be submitted and replied to using the standard format Annex VII of the Commission Implementing Regulation on the application of the AMMR() ([26]). The same Annex is used for the identification of family members or relatives of unaccompanied minors, for the purpose of applying the dependency clause and for information sharing in accordance with Article 51 AMMR. It is used when it is necessary for the purpose of determining the Member State responsible but it also contains a section for the purposes of examining the application of international protection, of implementing another obligation pursuant to the AMMR or of implementing a return decision ([27]). This standardised approach facilitates the exchange of information and ensures that all relevant parties have access to the necessary data. It is recommended to fill in the form in English.

Member States must share information for the purposes of examining an application for international protection through the secure electronic communication channel named DubliNet. Access to DubliNet is not by definition limited to the Units dealing with responsibility determination and can be granted to other departments at the national level, provided that it is communicated to the Commission ([28]).

To facilitate the efficient processing of information requests through DubliNet, the requests for information in support of the examination of the application for international protection are marked with a dedicated reference number (type 04) ([29]). This allows the competent authorities to easily distinguish these requests from other types of transmissions, and quickly identify the correct channel for responding to the request.

The standard form is divided into two parts. Part I is for the requesting Member State to fill in, part II is for the requested Member State to provide the reply:

([24]) Article 51(3) AMMR.
([25]) Article 51(9) AMMR.
([26]) See Annex VII of Commission Implementing Regulation (EU) 2025/2055 of 2 October 2025 laying down rules for the application of Regulation (EU) 2024/1351 of the European Parliament and of the Council, as regards asylum and migration management and repealing Commission Regulation (EC) No 1560/2003 (OJ L, 2025/2055, 12.11.2025), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202502055#anx_VII.
([27]) Article 51(1) AMMR
([28]) Article 51(6) AMMR
([29]) Article 526 Commission Implementing Regulation (EU) 2025/2055, see footnote 26.

Part I. Requesting Member State

For the purpose of examining a subsequent application for international protection, the following information items may be in particular relevant:

- personal details of the applicant;
- personal details of the family members;
- information on identity and travel documents;
- information necessary for establishing the identity of the applicant and;
- information on places of residences and routes travelled..

In the form the relevant options should be selected by the requesting case officer and the requested information can be specified in the open field. Member States should only request information that is strictly needed for the examination. By following this approach, Member States can ensure that information exchange is efficient, effective and tailored to the needs of the determining authority.

The last two information options of the standard form are in particular relevant to support the examination of the subsequent applications:

- **Previous applications**

> - Information on the date on which any previous application for international protection was registered, the date on which the current application was registered, the stage reached in the proceedings and the decision taken, if any;
>
> *(if selected, a field with free text will be activated to further specify with up to 500 characters)*

This information option in the form lists a number of possibly items, such as date of registration and the stage reached, however this does not limit the request. The free text field allows the requesting Member State to specify the information needed. It is also possible to directly request copies of documents which can be attached to the reply by the requested Member State.

It is recommended to make use of the free text to specify the information needed and to formulate the request in a clear and precise way, which will increase the chances to receive the right information.

It is in particular recommended to always ask:

- whether a final decision has been taken in the requested Member State, unless this is already clear from Eurodac;
- the date of the final decision or when a final decision is expected to be taken;
- the decision on the application for international protection, together with the decision issued by the court or tribunal if available;

- a list of all the documents submitted by the applicant, in case these are not exhaustively listed in the decision in administrative procedure and/or the decision in appeal.

- **Grounds on which the applicant based the application**

- The grounds on which the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant.

  (possible to be selected only if the request is for the purposes of the examination of an application for international protection; if selected, a field with free text will be activated to further specify with up to 500 characters)

Member States should request the decision on the application for international protection, together with the decision issued by the court or tribunal if available, as it may also contain additional relevant information regarding the grounds mentioned by the applicant. Additionally, any new elements presented by the applicant during the appeal procedure should be requested as these could also have an impact on the preliminary examination. If it is relevant for the ongoing case, it can be considered to ask for the interview transcript as well. Furthermore, the determining authority may request a list of documents or other evidence submitted by the applicant in case this is not included exhaustively in the attached decision(s).

Part II. Requested Member State

In this section, the Member State providing information needs to provide accurate and correct information about the applicant and any decisions made, using the same standard form. The requested Member State – depending on the received request – is usually required to include the following:

- information on the grounds of the application, including a brief summary of each ground and whether the application was accepted or rejected, along with the reasoning;
- whether a decision has become final or the procedure is still ongoing; and
- any other information requested.

Requesting and providing the relevant information through the standard form facilitates the exchange of information and supports the efficient examination of applications. There may be situations when more information is needed to examine the application, such as documents and other evidence submitted by the applicant or obtained by the other Member State. It is always possible to attach copies of requested documents to the standard form when replying to the request.

Whenever there is a request for a document which is in a non-European language, it is recommended to add the translation of the document to the reply, if available. For all other cases it is recommended to attach, to the extent possible, a copy of the requested documents in a machine readable format, such as a searchable PDF. This can facilitate a first translation of

the document by the requesting Member State with the help of an automated tool. If any parts of the translation are to be used as a decisive element in the decision, these parts should be verified by a human translator.

1.2. Making, registering and lodging a subsequent application

1.2.1. General principles

The basic principles and guarantees laid out in Chapter II APR remain valid for subsequent applications and must be respected at all times ([30]). In particular:

- the principle of *non-refoulement*;
- the right to remain on the territory of the Member State in which the applicant is required to be present pending examination of the application, without prejudice to the well-defined exceptions under Article 56 and Article 68(6) APR and in accordance with Article 10(4)(a) APR;
- the confidentiality principle;
- the principle of non-discrimination and gender equality;
- primary consideration of the best interests of the child;
- the principle of a fair and efficient asylum procedure;
- the principle of an individual, objective and impartial examination;
- the right to an effective remedy.

Respect of the above principles ensures that applicants have effective access to a new asylum procedure i.e. they can make a subsequent application for international protection and submit new facts, if their personal circumstances or the situation in the country of origin have significantly changed.

In light of the above, the applicant's effective access to the asylum procedure should be safeguarded by Member States in accordance with the provisions of the APR. This applies irrespective of the type of examination procedure to be applied.

([30]) For further information, refer to the following tools: EUAA, *Operational Standards and Indicators on the Asylum Procedure*, November 2025, https://www.euaa.europa.eu/publications/operational-standards-indicators-asylum-procedure; EASO, *Asylum Procedures and the Principle of* Non-refoulement – *Judicial analysis*, 2018, https://www.euaa.europa.eu/publications/judicial-analysis-evidence-and-credibility-context-common-european-asylum-system; EUAA, *Judicial analysis on evidence and credibility assessment in the context of the Common European Asylum System – Second edition*, 2023, https://www.euaa.europa.eu/publications/judicial-analysis-evidence-and-credibility-context-common-european-asylum-system.

1.2.2. Guarantees for the applicants

The APR ([31]) reaffirms the Member States' obligation to ensure that the relevant guarantees ([32]) are applied equally in cases of subsequent applications, following the principle that every applicant is entitled to an appropriate examination of their application. The basic guarantees set forth in the APR include the following.

- **Access to information.** The applicant's understanding of the asylum procedure is essential in achieving a fair examination procedure under the APR. Member States are required to provide information on the different asylum procedures ([33]) in time for the applicant to exercise their rights and comply with their obligations, and in a language that they understand or are reasonably supposed to understand.

  The APR provides that information on the asylum procedures (including any special procedures such as the one applicable to subsequent applications) is to be provided by means of the information provision leaflet(s) drawn up by the EUAA, 'either physically or electronically and, if necessary, orally' ([34]). Furthermore, such information could also be disseminated through specific webpages or mobile applications. The EUAA has developed a specific brochure on subsequent applications, in line with Article 8(7) APR, for the purposes of information provision at the latest when the application is registered.

  The information must be transmitted in a comprehensive way so that the applicant is able to understand their rights and obligations, where or how to lodge an asylum application and any other necessary requirement of the procedures.

  When making/registering/lodging a subsequent application, the information provided to the applicant must include the aspects of the admissibility examination applicable to subsequent applications. First of all, it should be explained to the applicant what a subsequent application is. This ensures that the applicant is aware of the conditions to be granted access to a new asylum procedure and of their rights and obligations during the procedure, including the consequences for not complying with those obligations. The information should include:

  - the right to lodge an individual application;
  - the procedural steps of the application;
  - the type of examination procedure;
  - what 'submission of new elements' means and what it requires;
  - the possibility or not of a personal interview;
  - the different time limits;
  - the consequences of not complying with the obligations;
  - the consequences of a negative decision and the remedies against it;

([31]) Article 55(4) APR.
([32]) Provided for in Article 8(1) APR.
([33]) Articles 8(2)(6) APR.
([34]) Article 8(2) APR.

- the exceptions to the right to remain both during the administrative procedure and during the appeal phase.

This information should be given in sufficient time to enable the applicant to exercise the rights guaranteed by the APR and to fully comply with all the relevant obligations, especially taking into consideration that shorter time limits are applicable when examining a subsequent application. For more information regarding information provision, see the EUAA's practical guide on the topic ([35]). Furthermore, the EUAA's Let's Speak Asylum portal presents a standardised methodology for communication and information provision applicable to all areas of the CEAS ([36]).

- **Access to and communication with the United Nations High Commissioner for Refugees or other organisations providing legal advice or counselling.**

- **Access to free legal counselling in the administrative procedure.** The aim of providing free legal counselling to applicants is to ensure that they fully understand the legal framework and the procedure's steps.

  For more information regarding the right to legal counselling, including when this right may not apply to subsequent applications, see the EUAA's practical guide on the topic ([37]).

- **Access to legal assistance and representation in the appeal procedure (upon request)** ([38])**.**

- **Provision of special procedural guarantees and adequate support when an applicant is assessed as having special procedural needs** ([39])**.**

- **Additional guarantees for unaccompanied children** ([40])**.**

- **Specific practical safeguards must also be guaranteed to ensure effective implementation of the right to remain,** in accordance with national law, to allow the applicant to remain on the state's territory during the administrative procedure or pending the outcome of the appeal, including, in particular, protection against *refoulement*. The competent authorities must issue a document after the lodging of the application stating that the applicant has the right to remain ([41]). For more information

([35]) EUAA, *Practical Guide on Information Provision in the Asylum Procedure*, December 2024, https://euaa.europa.eu/publications/practical-guide-information-provision-asylum-procedure.
([36]) https://lsa.euaa.europa.eu/methodology
([37]) EUAA, *Practical Guide on Free Legal Counselling: Organisation of the provision of free legal counselling*, October 2025, https://euaa.europa.eu/publications/practical-guide-free-legal-counselling.
([38]) For more information regarding the right to legal assistance and representation, see EUAA, *Operational Standards and Indicators on the Asylum Procedure*, 2025, see footnote 30. https://www.euaa.europa.eu/publications/operational-standards-indicators-asylum-procedure.
([39]) For more information regarding the procedural guarantees for special needs, see EUAA, *Operational Standards and Indicators on Vulnerability-related Aspects in the Asylum Procedure*, 2025, see footnote 30.
([40]) Article 23 APR.
([41]) Article 29(4)(d) APR.

regarding the exceptions on the right to remain, see Section 1.4 The right to remain in case of subsequent applications.

- **Language guarantees** ([42])**.** Interpretation must be provided when making/registering/lodging the application when necessary communication cannot be otherwise ensured. For more information regarding interpretation, see the EUAA,s practical guide on the topic ([43]).

1.2.3. Derogations from the guarantees

The legislation framework provides the possibility to derogate from some of the guarantees in the case of subsequent applications, as detailed below.

- **Access to free legal counselling in the administrative procedure**. Member States may exclude subsequent applicants from the right to free legal counselling while providing the information on the grounds for exclusion in writing. Exclusion may apply when:
  - 'the application is a first subsequent application considered to have been lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State' ([44]);
  - 'the application is a second or further subsequent application' ([45]).

- **Translation**. The applicant may be made responsible for the translation of documents ([46]).

- **Reduction or withdrawal of material reception conditions**. The Reception Conditions Directive ([47]) lays down other consequences linked to making a subsequent application. Chapter III of that directive allows Member States to reduce material reception conditions ([48]) in the case of a subsequent application as defined in the APR. However, it must be noted that any decision on the reduction (or withdrawal) of material reception conditions must be taken individually, objectively and impartially, indicating the reasons for it. Any such decision may be subject to an appeal within the procedures laid down in national law ([49]),must comply with the principle of proportionality and must respect human dignity. The assessment must be based on the particular situation of the person concerned and take into account the vulnerabilities of the person. Member States cannot reduce or withdraw the material reception conditions if this would have the effect of depriving the applicant of the

([42]) For more information regarding language guarantees, see EUAA, *Operational Standards and Indicators on the Asylum Procedure*, 2025, see footnote 30.
([43]) EUAA, IGC, *Practical Guide on Interpretation in the Asylum Procedure*, February 2024, https://euaa.europa.eu/publications/practical-guide-interpretation-asylum-procedure.
([44]) Article 16(3)(a) APR.
([45]) Article 16(3)(b) APR.
([46]) Article 34(4) APR.
([47]) Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (recast) (OJ L, 2024/1346, 22.5.2024), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401346, (RCD (2024)).
([48]) Article 2(7) RCD (2024).
([49]) Article 29(1) RCD (2024).

possibility to meet their most basic needs related to housing, food, clothing or personal hygiene ([50]). They must always ensure access to health care and a standard of living in accordance with Union law ([51]).

- **The right to remain**. Member States can derogate from the right to remain on the territory in the case of subsequent applications. For more information regarding the details, see Section 1.4 The right to remain in case of subsequent applications.

1.2.4. Obligations of the applicant

The APR establishes not only the guarantees applying to applicants ([52]) but also their obligations ([53]), as detailed below.

- **Obligation to cooperate**. As with an initial application, applicants are obliged to fully cooperate with the competent authorities. In particular, they are requested to provide data regarding their personal details, travel documents and contact information (place of residence, telephone number and email address). The obligation to cooperate includes the obligation to remain present on the territory of the Member State responsible and remain available throughout the procedure.

- **Obligation to substantiate** ([54]). In the specific case of subsequent applications, the obligation above is further supplemented by Article 55 APR. When the applicant makes a subsequent application, they are required to present 'new elements'. For further details, see Section 2.1 What are 'new elements'?

  The new elements must relate to the examination of whether the applicant qualifies as a beneficiary of international protection or relate to an inadmissibility ground previously applied.

  The criteria above must be considered as a whole in order to justify a new procedure. Therefore, it becomes apparent that the applicant has to submit new elements as an imperative component of the admissibility examination. The lack of such 'new elements' would result in a justifiable rejection of the subsequent application by the Member State who is not required to re-examine the same grounds for international protection and must consider the subsequent application inadmissible. Information about the obligation to substantiate must be given in time to allow the applicant to submit the reasons for reapplying for international protection. When lodging the new application, applicants can be required to submit all elements that are at their disposal.

([50]) See also the Haqbin ruling, in which the CJEU clarified the obligation of Member States to ensure a dignified standard of living, which must be guaranteed continuously and without interruption, including by supervising whether the provision of reception conditions actually provides an adequate standard of living. Judgment of the Court of Justice of 12 November 2019, *Haqbin* v *Federaal Agentschap voor de opvang van asielzoekers*, C-233/18, ECLI:EU:C:2019:956, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62018CJ0233_RES&qid=1770991165041&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=853.
([51]) Article 23(4) RCD (2024).
([52]) Article 8(1) APR.
([53]) Article 9 APR.
([54]) Article 4(1) QR.

If a decision on their ongoing application has not been taken yet, they should instead have the possibility to submit further elements ([55]). Similarly, in the event of simultaneous registration and lodging of a subsequent application, officers must ensure that the shortened procedure will not prejudice the applicant's ability to explain the reasons for their application and to present new elements.

Moreover, the determining authority should consider the applicant's obligation to cooperate and substantiate their case together with their personal circumstances, particularly where vulnerability issues arise ([56]). Thus, the individual assessment of the preliminary grounds should be seen in conjunction with the Member State's duty to provide all relevant information, eventually tailored to the personal situation of the applicant, should the latter be identified as in need of special procedural guarantees ([57]).

1.2.5. Making a subsequent application

A subsequent application, just like a first application, can only be made in person. In many cases, applicants make the subsequent application directly to the authorities responsible for the registration and/or lodging of applications for international protection. Subsequent applications not made directly to the competent authorities are most often made in the context of an arrest or detention, or in the context of a removal process. In these cases, the subsequent application will most likely be made to the police, the immigration authorities, the detention personnel or the reception authorities. If they do not have the competence to register the application, these authorities should at least:

a) have the relevant information and instructions in order to guide the applicants on where and how to proceed with their application for international protection; and
b) receive the necessary training to perform their tasks in relation to the asylum procedure.

The applicant is protected from *refoulement* as soon as the application is made, without prejudice to the exceptions from the right to remain described under Section 1.4 The right to remain in case of subsequent applications. Therefore, it is essential that the authorities responsible for registration and return are informed that an application has been made. As part of the basic guarantees of applicants in detention facilities, free interpretation services, when necessary, and access to organisations providing counselling must also be provided.

1.2.6. Registering a subsequent application

Member States are free to decide which authorities are competent to register applications, including subsequent applications, and must designate at least one. If the application is made to an authority that is not competent to register it, that authority must inform the authority

([55]) According to Article 28(6) APR, Member States may set a deadline for submitting those additional elements.
([56]) For more information regarding individual circumstances during the evidence assessment, see Section 2.3.1. in EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.
([57]) Article 21 APR.

responsible for registering applications within 3 working days. The authority responsible for the registration must then register the application within 5 working days ([58]). For subsequent applications, if certain information (name, date and place of birth, gender, identity and travel documents etc.) is already available, the authority does not need to collect this data again ([59]).

In this phase of the procedure, the information collected concerns the identification of the applicant **and includes elements similar to those gathered during the initial procedure** ([60]). Member States can establish a link with the information they collected before and can update this information regarding specific issues that might have changed since the previous registration (e.g. marital status, birth of children, address).

Depending on national practice, the registration may include other information such as: biometrics (the obligation for Member States to take the fingerprints and facial image of every applicant aged at least 6 is also applicable to subsequent applications ([61]); identification of possible vulnerabilities and special needs as early as possible in the process in order to provide special procedural guarantees to the applicant in need (it is likely that a record of vulnerabilities will be available from the initial procedure); medical examination; allocation to reception facilities; security screening; provision of procedural and legal advice; counselling on return options; or any other information regarding the rights and obligations of applicants.

At this stage, applicants may also be required to present new elements in writing and/or to provide relevant documentation or other pieces of evidence in their possession that may be necessary for the assessment of their case ([62]).

The registration phase aims at improving the effectiveness of the rights and obligations triggered when making an application for international protection. In the case of subsequent applications, however, specific rights may be derogated from, depending on national law (e.g. the right to material reception conditions or the right to free legal counselling). At this stage, Member States can derogate from the right to remain on the territory only in the case of a second, third or further subsequent application, following consultation with the determining authority. This is explored in further detail under 1.4 'The right to remain in case of subsequent applications'.

1.2.7. Lodging a subsequent application

Under the APR, the registration and the lodging phase can take place as two separate steps or be combined in one step, as long as the respective procedural safeguards are met. ([63]) If the two steps are not completed at the same time, the applicant must lodge the application within 21 days from when it was registered ([64]).

([58]) Article 27(3) APR.
([59]) Article 27(6) APR.
([60]) For further details, see EUAA, *Practical guide on the registration and lodging of applications for international protection*, December 2025. https://www.euaa.europa.eu/publications/practical-guide-registration-lodging.
([61]) This obligation is described in Article 15(1) Eurodac Regulation, see footnote 21.
([62]) On the duty of the applicant to substantiate their application, see Section 1.2.4 Obligations of the applicant.
([63]) Article 28(7) APR.
([64]) Article 28(1) APR.

The lodging of a subsequent application should take place in person at a designated date, place and, where communicated, time. Member States can lay down in their national legislation that an application is deemed lodged in person if it is verified that the applicant is physically present on the territory of the Member State at the time of registration or lodging. ([65]) Member States may lay down in national law the possibility of lodging a subsequent application through a specific form ([66]) which should include at least the new elements and evidence in support of the application, unless they had already been submitted at the previous step of the registration.

If the personal interview is omitted, it is very important that the applicant can submit and substantiate the new elements in writing.

1.3. Admissibility examination of a subsequent application

The preliminary examination should be concluded as soon as possible after the lodging. The specificities of the procedure allow for the swift issuance of a decision on admissibility. In particular, the below should be taken into account.

- The procedure is limited to the examination of whether there are new elements that
  - significantly increase the likelihood of the applicant to qualify as beneficiary of international protection, or
  - relate to an inadmissibility ground previously applied, where the previous application was rejected as inadmissible ([67]).
- An interview may be dispensed with under the APR ([68]).

1.3.1. Timeframes

National law may provide for limitations to the rights and benefits that the applicant enjoys during the preliminary examination of their application. In this case, there is a direct link between the duration of the preliminary examination and these limitations. Therefore, the determining authority should take a decision on the admissibility of the application as soon as possible and within two months of the lodging of the application ([69]).

When an application is found admissible, the determining authority should take a decision on the substance under the accelerated procedure ([70]) within three months of the lodging of the application, ([71]). The fact that the examination on the substance was preceded by an

([65]) Article 28(3) APR.
([66]) Article 28(4) APR.
([67]) Article 55(3)(a)(b) APR.
([68]) Article 55(4) APR.
([69]) Article 35(1) APR.
([70]) Article 42(1)(g) APR.
([71]) Article 35(3) APR.

admissibility examination does not extend the overall time limit of three months from the lodging of the application to the conclusion of the examination ([72]).

1.3.2. Submission of facts and evidence

In order to support the preliminary examination of a subsequent application, the applicant should indicate facts and substantiate evidence that would significantly increase their likelihood of qualifying as a beneficiary of international protection under the QR or relate to an inadmissibility ground previously applied.

However, there could be different options set out in national legislation regarding the submission by the applicant of facts, documents or other pieces of evidence to support their subsequent application. The APR does not cover how the applicant can submit such elements. This is left to the discretion of the national legislator.

When making a subsequent application, the applicant should be provided with information on how, when and where submit new elements, including a clear timeframe for these actions.

If a personal interview is conducted, it will aim at exploring new elements. Specific questions will be asked to the applicant with regard to the new facts and circumstances of their case. The applicant must benefit from the interview-related guarantees laid out in Articles 13 and 14 APR, such as: confidentiality; recording using audio means ([73]), allowing the applicant to present their grounds in a comprehensive manner (interviewer is competent to take into account the personal and general circumstances surrounding the application – when necessary; the interviewer and/or the interpreter may be a person of a certain sex that the applicant prefers, if requested by the applicant); giving the applicant an adequate opportunity to present the elements needed to substantiate their application; making a factual report containing all substantive elements / transcript; and providing the applicant with the opportunity to make comments, provide clarifications in the report/transcript and access to the report/transcript.

Due to the specific procedural nature of subsequent applications, providing correct information to the applicant is essential. If there is no interview, the competent authority should provide guidance to the applicant on how to present new elements of the claim in writing. This could be done, for example, by providing information, guidance and support to the applicant in this regard and, if applicable, by using a standard lodging form.

The form and/or guidance could include, inter alia, information and/or questions making it possible for the applicant to elaborate and to:

- list the new elements submitted to support the new application;

([72]) Furthermore Article 42(2) APR provides that the examination may continue on the merits if the application involves issues of fact or law that are too complex to be examined under an accelerated examination procedure.

([73]) Article 14 APR. For more information on the audio recording of the interview, see EUAA, *Practical Recommendations on the Audio Recording of the Personal Interview*, October 2025, https://www.euaa.europa.eu/publications/practical-guide-audio-recording-personal-interviews.

- explain how these elements are new in relation to any previous applications;
- describe the new elements that might be supported by relevant evidence;
- list the reasons why these new elements were not submitted during any previous application(s);
- describe how these new elements make it likely that the applicant qualifies as a beneficiary of international protection.

1.3.3. Conducting the admissibility examination

The assessment of a subsequent application should be conducted similarly to that of any previous application(s). The determining authority and the applicant must cooperate to identify the relevant elements ([74]). In this regard, the responsible case officer should:

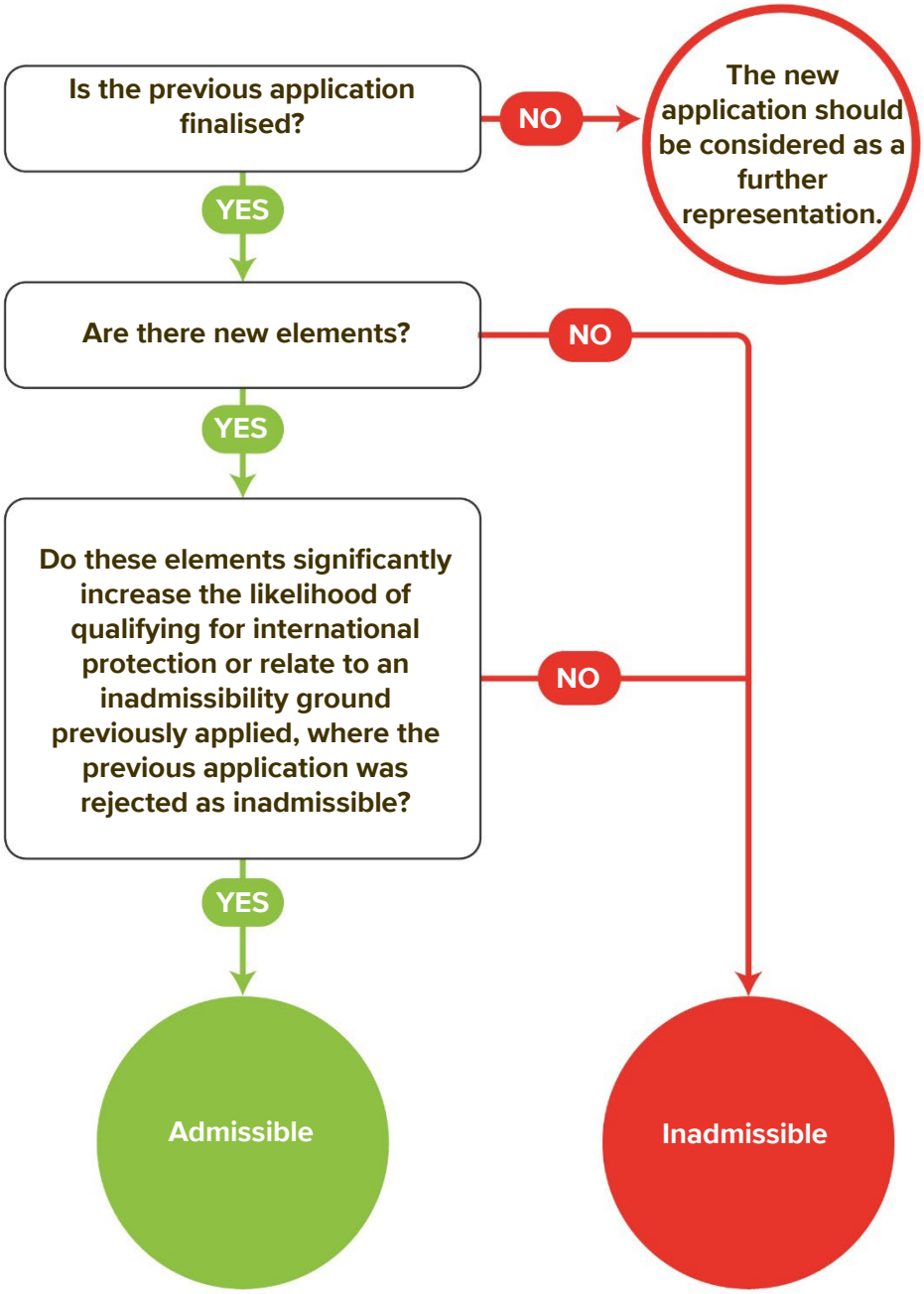
- have access to all the relevant elements of the previous application(s), even when the examination of the previous application took place in another Member State ([75]);
- have knowledge of the relevant legal framework, policy changes and/or new case-law;
- take into account relevant and up-to-date country of origin information (COI) or other relevant, objective and reliable information originating from multiple sources in line with the standards found in Chapter II APR;
- take into account the information submitted by the applicant, either in writing (specifically for this procedure or other written statement) or during the personal interview, if any;
- take into account any special needs and the individual circumstances of the applicant.

By doing so, the case officer can assess whether an interview is needed or the written submissions are sufficient.

It is also recognised that subsequent applications are not always submitted based on new evidence or facts. The APR acknowledges that it would be disproportionate to oblige Member States to carry out a new full examination procedure when an applicant makes a subsequent application without presenting new evidence or claims. For this reason, as an element of novelty introduced by the APR, Member States have the obligation to dismiss an application as inadmissible following a preliminary examination based on written submissions or a personal interview ([76]) when no new relevant elements have arisen or have been submitted by the applicant.

([74]) Judgment of the Court of Justice of 10 June 2021, *LH* v *Staatssecretaris van Justitie en Veiligheid*, C-921/19, EU:C:2021:478, https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:62019CJ0921&qid=1770994826499&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1841.
([75]) *QY* v *Germany*, see footnote 23.
([76]) Recital 77 and Article 38(2) APR.

Figure 1. Flowchart on admissibility



1.4. The right to remain in case of subsequent applications

The right to remain on the territory during the asylum procedure is a general rule provided for by the APR ([77]). Therefore, the exceptions mentioned therein ([78]) are exhaustive and should be interpreted in a restrictive manner. Member States may derogate from the right to remain in one specific circumstance during the administrative procedure (see Section 1.4.1 below) and in three specific circumstances after a decision has been made by the determining authority (see Section 1.4.2). ([79])

It should be stressed that in both situations the APR allows for exceptions to the right to remain only where the determining authority is satisfied that a removal decision will not lead to direct or indirect *refoulement* in violation of the international and EU obligations of that Member State. This places a clear obligation on national authorities to be certain that the removal of an applicant will not expose them to risks contrary to the *non-refoulement* principle.

The following sections present the exceptions to the right to remain.

1.4.1. Exception to the right to remain during the administrative procedure

The applicant must be allowed to remain in the Member State until the determining authority has made a decision in accordance with the administrative procedure ([80]). The procedure to seek international protection is 'suspensive' (i.e. suspensive of any forced removal procedure) by law.

There is only one exception to this basic principle during the administrative procedure: when a first subsequent application has been rejected with a final decision either as inadmissible or as unfounded or as manifestly unfounded. In such situations, removal of the applicant may take place, without prejudice to the *non-refoulement* principle, before a decision is taken on the new subsequent application. Member States can derogate from the right to remain for any additional subsequent application for the whole duration of the administrative procedure and until any appeals become final ([81]). This exception is based on the assumption that the repeated subsequent applications may be abusive since the applicant has already benefited from a thorough examination of their first application and of their first subsequent application. This exception may be applied irrespective of whether the further subsequent application was made in the context of an imminent removal. In any case, authorities can only proceed with the return decision when the determining authority considers that there is no risk of direct or indirect *refoulement*. In other words, the determining authority or other competent authority

([77]) Articles 10 68 APR.
([78]) Article 56 and Article 68(6) APR.
([79]) The exceptions mentioned under Article 10(4)(b-c) APR also apply to subsequent applications.
([80]) In accordance with Article 10 APR.
([81]) Article 56(b) APR.

according to national law always needs to be consulted before the exception to the right to remain is implemented, so that it can ensure that there is no risk of *refoulement*.

Even though no right to remain applies to these applicants, the processes of information provision, registration, lodging and examination should continue within the set timeframes for these purposes, for as long as the applicant is present on the territory.

If the national law requires the issuance of a decision stating that the applicant has no right to remain, this can already be issued at the time of the registration or lodging of the additional subsequent application, provided that the determining authority or other competent authority according to national law has been consulted and considers that the return would not lead to direct or indirect *refoulement*.

1.4.2. Exceptions to the right remain during the appeal procedure

(a) During an appeal against inadmissibility

In the case of a first subsequent application that is not further examined because it is considered inadmissible under the APR ([82]), the applicant has the right to appeal the decision. In this case, a court or tribunal will decide whether the applicant is allowed to remain on the territory of the Member State during the appeal procedure, either upon the applicant's request or acting *ex officio* under national law ([83]). When deciding on the right to remain, it is the obligation of the appeal body to comply with the principle of *non-refoulement*.

(b) Subsequent application lodged merely to frustrate removal and found inadmissible

An applicant might lodge a subsequent application merely to hamper or frustrate a removal process. Member States may make an exception to the right to remain as soon as such a subsequent application is found inadmissible by the determining authority ([84]). The condition mentioned under point (a) above, that an appeal authority will have the power to rule on whether the applicant may remain on the territory during the appeal procedure, does not have to be applied in this situation. The APR, however, imposes strict conditions to derogate from the right to remain which are to be met cumulatively.

1. The current subsequent application is not further examined and is found **inadmissible**. This implies that, during the preliminary examination by the determining authority, the applicant has the right to remain.
2. It was the intention of the applicant to lodge the application **to merely delay or frustrate** the imminent removal.
   This condition implies that the applicant's intention can be identified and that the intention is aimed solely at delaying or frustrating an imminent removal.
   This condition calls for interpretation by the national authorities. Member States may provide for additional guidance in their national legislation or practice.

([82]) Article 38 and Article 55(7) APR.
([83]) Article 68(4) APR.
([84]) Article 56(a) APR.

3. The determining authority has considered that a removal decision would not infringe the **principle of *non-refoulement***.
   This condition implies that the authority that decides on the right of the applicant to remain in the territory has received information from the determining authority indicating that there is no risk of violation of the principle of *non-refoulement* if a forced removal is carried out.

(c) Appeal lodged merely to frustrate removal and found inadmissible

Member States may derogate, under national law, from the right to remain in the case of an appeal against a decision rejecting a subsequent application if the appeal is considered to have been lodged merely in order to delay or frustrate the removal process ([85]). Two of the restrictions listed under point (b) above apply in this case, namely: it was the intention of the applicant to submit an appeal **to merely delay or frustrate** the imminent removal and a removal decision would not infringe the **principle of *non-refoulement***.

([85]) Article 68(6) APR.

2. Preliminary examination

During preliminary examination, the case officer needs to assess whether the elements submitted by the applicant under the subsequent application are new and whether they

- significantly increase the likelihood of the applicant to qualify as a beneficiary of international protection, or
- relate to an inadmissibility ground previously applied, where the previous application was rejected as inadmissible ([86]).

This chapter focuses specifically on the analysis of the following main aspects:

- what 'new elements' are and in which situations they can be found;
- what 'significantly increase the likelihood' means and
- what 'relate to an inadmissibility ground previously applied' means;
- how the preliminary examination is concluded.

2.1. What are 'new elements'?

2.1.1. When can the elements be considered new?

Elements are **facts** and **circumstances** that may be presented by the applicant or identified by the authority in the context of the examination of a subsequent application.

There are two situations in which elements are considered new.

- When they relate to facts or circumstances that have occurred **after the final decision**.
- When they **existed** before but **were neither presented** by the applicant, where the applicant was unable, through no fault on their part, to do so, **nor considered** by the asylum authority in the previous application(s).

(a) New elements that have arisen after final decision

The first situation relates to international protection needs that have arisen *sur place* ([87]). New facts or circumstances can occur in the country of origin or the applicant may have engaged in new activities in the country of asylum after a final decision has been taken on the previous application. These changes can happen in the country of origin and/or can happen to the personal situation of the applicant, regardless of the length of time the applicant has resided (regularly or irregularly) abroad. In particular when a third-country national or applicant stays for a long time outside their country of origin after their previous application for international protection was rejected, *sur place* situations may be presented in subsequent applications. The developments or events in the applicant's life or country of origin can give rise to a well-

([86]) Article 55(3) APR.
([87]) Article 5 QR.

founded fear of persecution or a real risk of serious harm on return ([88]), unless the risk of persecution or serious harm is based on circumstances which the applicant has created since leaving the country of origin for the sole or main purpose of creating the necessary conditions for applying for international protection. However, this is under the condition that 'any decision taken on the application for international protection respects the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the 'Geneva Convention'), the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union' ([89]). It should be emphasised in that regard that whether or not, since leaving the country of origin, the applicant has engaged in activities for the sole or main purpose of creating the necessary conditions for applying for international protection, as referred to in Article 34(2)(e) APR, is merely one factor to be taken into account by the competent national authorities for the purposes of that individual assessment. The authorities must carry out a complete examination of all the circumstances specific to the applicant's individual case, taking into account all of the elements listed in Article 34(2)(a) to (e) APR. The assessment of whether the fear of the applicant is well founded always remains forward-looking, and the principle of *non-refoulement* should in all cases be respected ([90]).

(b) Elements that existed before but were neither presented by the applicant in the previous application(s) nor considered by the asylum authority

This situation relates to elements that existed during the previous procedure but were not brought to the attention of the determining authority or considered by the asylum authority. These elements are considered new because they were not examined during the previous procedure and the final decision concerning the previous application was not based on them ([91]).

However, Article 55(5) APR provides that '[T]the elements presented by the applicant shall be considered to be new only where the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application. Any elements which could have been presented earlier by the applicant need not be taken into account unless they significantly increase the likelihood of the application not being inadmissible or of the applicant qualifying for international protection, or if a previous application were rejected as implicitly withdrawn … without an examination on the merits. ([92])'

([88]) Judgment of the Court of Justice of 29 February 2024, *Bundesamt für Fremdenwesen und Asyl v JF*, C-222/22, EU:C:2024:192, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62022CJ0222_RES&qid=1770995460965&rid=2. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4118.

([89]) Article 5(2) QR.

([90]) The determining authority may refuse to grant international protection. See Judgment of the Court of Justice of 9 September 2021, *XY v Bundesamt für Fremdenwesen und Asyl*, C-18/20, EU:C:2021:7101, paragraph 35, https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:62020CJ0018&qid=1770995659435&rid=1. The issue of protection needs arising sur place is defined in EUAA, *Practical Guide on Qualification for International Protection*, May 2026.

([91]) *XY v Bundesamt für Fremdenwesen und Asyl*, paragraphs 31 to 44, see footnote 90.

([92]) Article 55(5) APR. In this context it has to be noted that the CJEU ruled that Article 4(3) of the Directive 2011/95/EU 'requires the competent national authority to carry out a complete examination of all the circumstances specific to the applicant's individual case, which precludes any kind of automaticity.', judgment in *Bundesamt für Fremdenwesen und Asyl v JF*, paragraph 37, see footnote 88.

For example, after receiving a threat from their neighbour in the country of origin to start a court case, the applicant submits a subsequent application claiming that they cannot return to their country of origin due to a land dispute with their neighbours. However, the applicant does not provide any explanation as to why this issue was not raised during the earlier application, despite the fact that the dispute already existed at that time. As such, the first condition of Article 55(5) APR — that the applicant was unable, through no fault of their own, to present these elements in the context of the earlier application — is not fulfilled. Moreover, the described dispute does not indicate a significant increase of the likelihood of the applicant qualifying for international protection. Therefore, the second condition — whether the new elements significantly increase the likelihood of the application being admissible or the applicant being eligible for international protection — is also not met. Consequently, the elements presented in the subsequent application cannot be considered 'new' within the meaning of Article 55(5) APR.

At the same time there may be objective or subjective situations where the applicant was aware of certain element(s) of their case but, through no fault of their own, was unable to present them. Such situations may derive from the situations below ([93]).

- **Personal circumstances** that make it difficult to gather and put forward documentary proof. Such circumstances may be related, for example, to the applicant's incapacity, to the conditions under which they fled their country of origin, to mental health issues, or to the age, cultural, linguistic or educational background. Incapability or other personal circumstances have to be demonstrated by the applicant and assessed by the determining authority on a case-by-case basis, before any negative outcome of the preliminary examination.

- **Practical difficulties** can also impede applicants' access to documentation: the lack of a social network in the country where the applicant is present or in the country of origin, the lack of registration practices and filing systems in some countries and risks stemming from contacts with official services can make it difficult to gather documentary proof. However, the applicant should be able to provide a clarification for delays in providing documentation. At this stage, the case officer should take into account the applicant's access to documentation, as well as other factors such as the length of previous asylum procedure.

- A relevant event took place while the previous procedure was ongoing, but the applicant **became aware of it after the end of the procedure**. For example, the applicant's claim is persecution by the state due to their political activity. The authorities visited their family in the country, searching the house and asking questions about the applicant. Although the incident took place before the applicant's interview during the first application, the applicant learnt about it a few days before the subsequent application. The same could happen with documentary or other material evidence, when the existence of it became known after the end of the previous procedure.

([93]) The case of the inadmissibility decision following implicit withdrawal of the application is presented below under chapter 3.4.2.

- **Sexual and gender-related issues** ([94]): (credible) inability to mention very intimate subjects during the previous application (rape, homosexuality) or (credible) lack of knowledge about the possibility to receive international protection (domestic violence, risks related to female genital mutilation, etc.). Persons whose applications are related to sexual orientations and gender identities that are not accepted in their country of origin often have to conceal their true identity, feelings and opinions in order to avoid shame, exclusion, stigmatisation and very often also the risk of violence. Stigmas and feelings of shame may further inhibit these applicants from disclosing information within the asylum context. There are numerous cases where the applicant discloses that they are lesbian, gay, bisexual, trans or intersex only in a subsequent application. These issues are also relevant for applicants who disclose gender-based persecution at a later stage in their application. Since shame and trauma may make it difficult to disclose such harms, late disclosure should not lead to the inadmissibility of the application, if the requirements of Article 55(5) APR are met ([95]).Similar to other new claims in subsequent applications, it is important to take into account the individual circumstances of the applicant and at the same time ascertain whether the applicant had the opportunity to mention the (new) claim(s) in the first asylum procedure, and the reasons why it was not done, given the length of the procedure and the stage of integration.

A situation in which elements existed during the previous procedure but were not considered by the asylum authority may fall under cases of implicit or explicit withdrawal ([96]).

CJEU, 2024, *A. A. v Germany* ([97])

The CJEU interpreted the concept of 'new elements or findings' for a subsequent application and ruled that CJEU judgments **can constitute a new element** justifying a fresh examination of the substance of a subsequent application. In particular the Court ruled that 'any judgment of the Court of Justice of the European Union, including a judgment which is limited to interpreting a provision of EU law already in force at the time that a decision on a previous application was adopted, **constitutes a new element**, within the meaning of those provisions, irrespective of the date on which it was delivered, if it significantly adds to the likelihood of the applicant qualifying as a beneficiary of international protection'.

([94]) EUAA, *Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics — Examination procedure*, November 2024, https://www.euaa.europa.eu/publications/practical-guide-SOGIESC-examination-procedure.

([95]) The CJEU has clarified that '... having regard to the sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset', see Judgment of the Court of Justice of 2 December 2014, *A and Others v Staatssecretaris van Veiligheid en Justitie*, C-148/13, ECLI:EU:C:2014:2406, paragraph 69, https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:62013CJ0148&qid=1770996509095&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1483.

([96]) For these situations see Section 3.4 Following the withdrawal of an application.

([97]) Judgment of the Court of Justice of 8 February 2024, *A. A. v Germany*, C-216/22, ECLI:EU:C:2024:122, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62022CJ0216_RES&qid=1770996635228&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4053.

Related EUAA publication

For further details on the connection between evidence and material facts, EUAA, *Practical Guide: Evidence and Risk Assessment*, January 2024, p. 52-53, https://www.euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.

2.1.2. Three scenarios in which new elements can be presented

The new elements may either originate from facts or circumstances that already existed during the first examination (but of which the applicant was not aware or that the applicant was unable to present) or refer to facts or circumstances that have arisen since. It is possible to present new elements in the following three scenarios:

- as part of a previously presented and assessed material fact;
- as part of a new material fact;
- as a totally new claim.

For each of these scenarios it is important to examine the risk of persecution or serious harm invoked under it. However, they differ greatly from one another.

(a) New element substantiating a previous material fact

During the preliminary examination of a subsequent application, applicants may submit new elements that are related to material facts that were examined under the previous application. During the previous application these material facts may have been rejected or accepted (but, in the latter case, they did not support the risk assessment or legal assessment). In this case, the subsequent application is an extension of the previous one. This also means that there is already a clear point of reference in the previous examination, when the time comes to assess that new element. For example, the material fact is the religious conversion of the applicant. This material fact was presented, assessed and rejected during the first examination. Now the applicant provides a new element, i.e. a certificate from the church where they were baptised. This is a new element related to the already identified and assessed material fact.

Often, if the previous assessment led to the rejection of the material fact, the new element would aim at changing the credibility assessment of that material fact. However, substantiating a previously existing material fact is not limited to changing the credibility assessment, but can also support or alter the risk assessment related to the material facts and the legal assessment.

(b) New material fact

In the second scenario, the new elements are related to a new material fact within the same claim. So, by presenting the element(s), the applicant presents at the same time a new material fact that had not been presented and assessed during the first examination of the claim.

For example, consider a new material fact related to the applicant's political involvement. The applicant states during his subsequent application that, since leaving his country, he has been involved with the diaspora in the host country and has participated in several demonstrations in front of their embassy. The applicant also says that the authorities know about it. These activities are in line with his earlier political involvement in his country of origin, which had been raised during the first application. The subsequent application is an extension or continuation of the previous claim of the aforementioned political involvement. But there are new material facts: the applicant's involvement with the diaspora, their participation in demonstrations in the host country and their visibility by the national authorities of the country of origin.

(c) New claim

Under this scenario, the applicant presents a totally new claim, for example regarding their sexual orientation. In this example, let us assume that the applicant had previously applied for international protection on the basis of political activity in their country of origin; they now claim that they will face problems because of their sexual orientation. This claim comprises several new material facts relevant to the case: the applicant's sexual orientation; any relevant events such as the situation of persons with a diverse sexual orientation in the applicant's country of origin; the applicant's social and economic situation; the family context in which they were raised; any persecution they may have suffered in the past; or other events linked to the new fear that is claimed.

As a distinctive feature of this scenario, the new claim is not a continuation or an extension of the previous one. The elements invoked are completely different, meaning the determining authority will start from a blank page.

In this scenario there is no point of reference from the previous assessment to which the new claim / material facts can be linked. Therefore, the assessment has to be done on the basis of this new claim. It is up to the case officer to decide whether this is a new element.

During the presentation of new elements by the applicant and the processing of the subsequent application, the authority responsible for examining the admissibility of the application can come across new elements, for example a new COI report.

The scenarios described above put the elements in a context that reflects whether and/or how they are connected with the previous claims of the applicant. This shows whether the elements are new or not. At this stage, it is up to the determining authority to decide whether the elements that have been presented or have arisen are new.

2.2. What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean

After concluding that the elements that have arisen and/or have been presented by the applicant during the subsequent application are new, the case officer has to decide whether they significantly increase the likelihood of the applicant to qualify as a beneficiary of international protection or whether they relate to an inadmissibility ground previously applied in the context of a past application that was rejected as inadmissible.

2.2.1. Significantly increase the likelihood

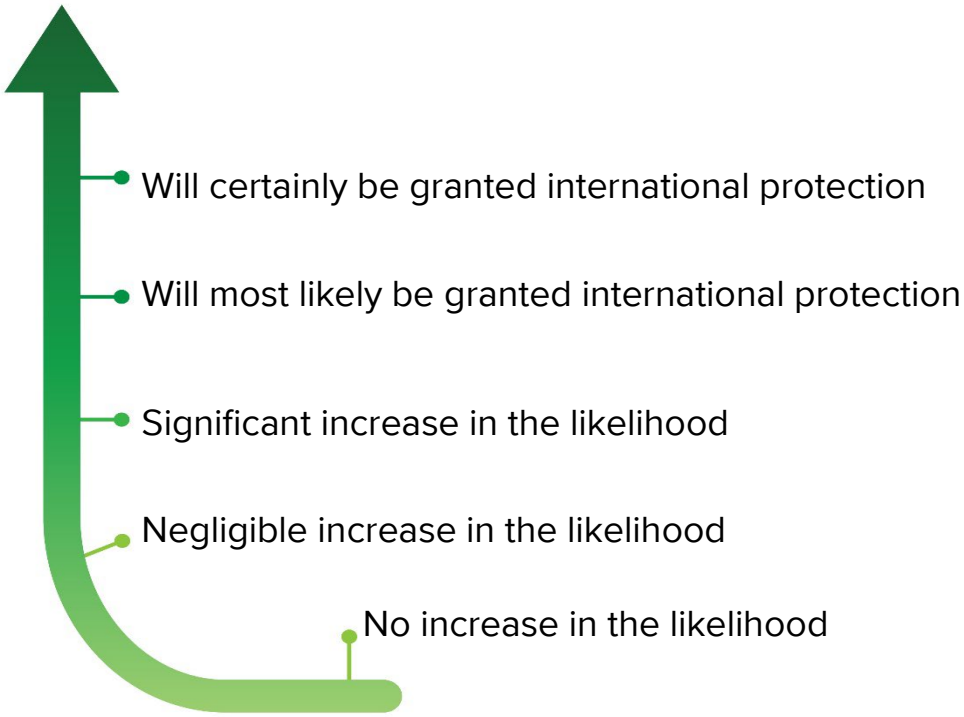
(a) Standard of the increase of likelihood

'Significantly' means 'in a way that is easy to see or by a large amount' ([98]) or 'in a way that is large or important enough to have an effect on something or to be noticed' ([99]). The common meaning of 'significantly' calls for a meaningful increase in the likelihood.

If we translate this into the degree of likelihood of qualifying for international protection, a significant increase in the likelihood would fall between a negligible increase in the likelihood and a situation in which the new element that has been presented or has arisen would most likely lead to the granting of international protection.

([98]) https://dictionary.cambridge.org
([99]) https://www.oxfordlearnersdictionaries.com

Figure 2. Degree of likelihood of qualifying for international protection



The preliminary nature of the examination has to be kept in mind.

The distinction between the standard of 'significant increase in the likelihood' and the standards of 'will most likely be' or 'will certainly be' granted international protection derives from the preliminary nature of the examination itself.

Preliminary examination is, as the wording itself suggests, an examination that is done 'before' the examination on the merits, to see whether the latter is needed. Therefore, a preliminary examination is not in itself an examination on the merits. Case officers do not need to establish whether the new element will indeed lead to the granting of the refugee status or subsidiary protection. They only need to assess whether there is a significant increase in the likelihood of this happening. The requirements are therefore less demanding than in a fully-fledged examination. It is enough that the element is new and potentially able to alter the conclusion of the previous examination. However, once the preliminary examination has been concluded, it may not always be necessary to conduct an additional interview to reach a decision on the merits.

(b) Criteria to determine a significant increase in the likelihood to qualify for international protection

The new element can only 'significantly increase the likelihood' if it addresses a central element of the assessment of the need for international protection.

In order to determine whether the element significantly increases the likelihood of qualifying for international protection, the following questions should get an affirmative answer.

a) Is the new element **relevant**? Does it support a material fact?

Material facts are facts and circumstances that are directly linked to the definition of refugee (Article 3(5) QR) or person eligible for subsidiary protection (Article 3(6) QR), and go to the core of the application. It is usually redundant to focus on minor or non-essential facts that do not affect the central elements of the claim ([100]). In the three scenarios described above, the situations where new elements can be presented are indeed all linked to material facts as they are linked to an existing material fact, constitute a new material fact by themselves or constitute an entirely new claim.

b) Is the new element **important**? Could it be of **decisive importance** for the granting of international protection status?

The element should not only be new and relevant but also be of such a nature so as to have a direct or indirect impact upon the assessment of the risk in case of a return to the country of origin.

c) After a first examination, is the new element **credible or persuasive**?

An examination should be carried out to assess the evidential strength of the new element. New elements that are clearly fraudulent do not significantly increase the likelihood of the need for international protection. However, given the preliminary nature of the examination, this assessment should not go further than the information immediately available.

Practical example

Sabna claimed in her previous application that she had trouble with her family because she converted to Christianity. Her conversion and the subsequent problems were found not to be credible. She lodges a new application and confines her statement to the assertion that her mother has since threatened her in a letter with death. She does not submit the letter itself.

A new element has been brought forward, however due to the lack of credibility of Sabna during her previous application, the statement alone would not be sufficient to potentially change the initial assessment. Therefore, her new statement does not significantly increase the likelihood of qualifying for international protection.

In the same example, let us assume that, in addition to her statement, Sabna also submits the threatening letter from her mother. But the letter is not signed, and the applicant cannot present the envelope in which it was sent. This situation will not increase significantly the likelihood of the need for international protection. In fact, it is already clear during the preliminary examination that the submitted document cannot potentially change the initial assessment, since a private letter of uncertain origin cannot be found sufficiently reliable on its own to alter the credibility findings of the previous decision.

([100]) For more information regarding the identification of material facts, see Section 1.2.1 in EUAA, *Practical Guide: Evidence and Risk Assessment*, January 2024, https://www.euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.

(c) Significant increase in comparison to the previous decision

When the new elements of a subsequent application are presented in the background of an earlier application that has already been examined on the merits, the point of reference to assess the significant increase will be:

- the decision of the determining authority on the merits; or
- the judgment of the court or tribunal of appeal, if there has been an appeal and the court or tribunal has taken a final decision on the substance which cannot be questioned unless new substantive elements are put forward.

The standard of 'increased likelihood' is a relative term. The case officer should take the previous decision and/or judgment as a starting point for the assessment, and examine whether there are any new elements that are of such a nature that they can increase significantly the likelihood of granting international protection. This can be the case when the new elements are related to a material fact that had already been examined during the previous decision, but now puts the assessment in a different light. It also applies when the new element constitutes a new material fact by itself within the context of (one of) the previous claim(s), or constitutes a new claim altogether (see Section 2.1.3 Three scenarios in which new elements can be presented).

a) New elements that substantiate a material fact that has already been accepted

Any new information that merely further substantiates the credibility of a material fact that had already been accepted in a previous application would not be considered as increasing significantly the likelihood of qualifying for international protection if all the other general and particular circumstances remain unchanged.

b) New elements that can potentially change the credibility assessment of a previously rejected material fact

When a material fact that had previously been rejected is reconsidered as being credible, in most cases the likelihood of the need for international protection will significantly increase, unless it is immediately clear that the newly accepted material fact will not affect the risk assessment or, in other words, will not increase the risk for the applicant in case of a return to the country of origin.

For example, if the applicant has submitted compelling medical documentation that is indicative of having suffered torture, inhuman or degrading treatment or punishment, or when very serious injuries/mental illness are attested by compelling medical documents and there is evidence of torture or inhuman or degrading treatment, a decision on the admissibility of the application may be necessary even if the facts or circumstances invoked by the applicant lack credibility. Such a decision would in fact help shed light on the causes of the injuries / mental illnesses.

1. New element that establishes a new material fact

New elements constituting a new material fact and acceptable as such will, in most situations, significantly increase the likelihood of the need for international protection. This would be enough to justify an admissibility decision unless it is immediately clear that the new material fact does not affect the initial risk assessment.

As an example: the applicant referred in their initial application to a general situation (human rights violations, general security situation, general political, ethnic, social situation, etc.) that, in itself, is not sufficient to provide a basis for international protection. They then submit a subsequent application providing new elements that demonstrate that the applicant is or will be personally affected.

2. New elements that establish a new claim

New elements establishing a new claim that is not manifestly unfounded will, in principle, lead to an admissibility decision, as the new elements had not been assessed before.

This can be the case when the previous application related to a situation falling outside the scope of international protection (e.g. family visit, study reasons, socioeconomic situation), and the subsequent application brings forward elements that establish a fear or real risk of persecution or serious harm upon return.

3. New elements that affect the risk assessment

New elements can also shed a different light on the initial risk assessment (and legal assessment). This would mostly be the case when: the applicant presents new COI; the asylum administration itself has become aware of new COI; the applicant can demonstrate, based on new elements, that their personal circumstances have become more precarious or vulnerable. The list below presents different situations where the initial application was rejected based on the risk assessment and illustrates how new elements can affect them.

- The probability of something happening to the applicant based on that material fact was too low but new elements demonstrate a considerable change in this probability.
- There was a possibility of an internal protection alternative within the meaning of Article 8 QR, but new elements show that the internal protection alternative location is no longer available or was wrongly assessed.
- There was a possibility of protection within the meaning of Article 7 QR, but new elements show that that protection is no longer available or was wrongly assessed in the first place.
- The problem raised was assessed as no longer being current, but new elements show that it has reappeared or that the initial assessment was incorrect.
- The act was not considered to be a sufficiently severe violation of basic fundamental rights, but new elements show that the act was actually more severe, or that new personal circumstances would lead to a more severe impact on the applicant if the same act were to be repeated in the future.

Below is a set of concrete examples of new elements that can significantly increase the likelihood of the need for international protection.

- A recently published COI report shows evidence of a substantial increase in indiscriminate violence during an ongoing armed conflict in the country of origin of the applicant. The conflict has spread and is currently affecting the whole territory of that country. The report shows that civilians are seriously affected, regardless of their individual circumstances, and that they may be exposed to a real risk of serious harm due to their mere presence on the territory.
- There has been a significant deterioration in the human rights or security situation in the country of origin. It appears that the applicant can rely, individually, on this general situation to make their case in the subsequent application.
- The applicant has submitted new information showing that the COI used to justify the earlier decision was incomplete, inaccurate or outdated.

4. Taking into account all relevant elements

As for any application, the assessment of the new elements that have been presented or have arisen within the framework of a subsequent application should be conducted taking into account all relevant personal and individual circumstances ([101]). The assessment should take into account all the relevant general information available to the authority in charge of the admissibility decision.

In the context of the preliminary examination, elements could arise that may negatively affect the likelihood of qualifying for international protection. The authorities need to take all these elements into account.

For example, from the information gathered during the lodging of the subsequent application it appears that the applicant has declared that they have another nationality or identity, different from the one under which they presented themself to the authorities of the host Member State or of another Member State. Such information could emerge, for instance, from documents submitted under, or that have arisen during, other procedures, either in the host Member State or in other Member States (e.g. visa information, responsibility examination).

Another example: a female applicant states that she fears being forced into marriage. When explicitly asked if she had been married in the past, she said no. However, it emerges from a visa application submitted 8 months earlier in another Member State that she had declared herself as being married and having two children. She had attached several documents to her visa application in support of this claim, including a marriage certificate and the birth certificates of both her children, which also feature the name of her husband. In such a case, it should be borne in mind that an applicant may be able to give a valid explanation for justifying what appears to be fraudulent. If controversial elements of this kind appear in the file, it would be preferable to conduct an interview with the applicant before making a decision related to

([101]) The CJEU has confirmed that the assessment of evidence cannot vary, whether it is a first or subsequent application, and that the Member State must cooperate with the applicant for the purpose of assessing the relevant elements of the subsequent application: *LH v Staatssecretaris van Justitie en Veiligheid*, paragraphs 58 to 61, see footnote 74.

the admissibility of the application, so that they have the opportunity to give an explanation about that decisive controversial element ([102]).

5. Case study

The following example is used as a case study on how different elements can have a different impact on the assessment of the 'significantly increase the likelihood' standard.

The case

In his previous application, the applicant (BJ) invoked problems due to his political involvement with the opposition political party, the Freedom Party. BJ's statements were found to be credible with respect to his membership of the Freedom Party. Although he did not file any documentary evidence to support his membership, his statements were considered to be sufficiently credible for this material fact to be accepted.

On the basis of the available COI, however, it appears that membership in the Freedom Party alone is not sufficient to give rise to a well-founded fear of persecution. Only particularly active and visible members of the party are likely to encounter problems with the authorities. BJ's statements that he is the president of the youth wing of the party in his city were not found to be credible. In addition, he was unable to provide a valid explanation for the lack of documentary evidence to support his position and numerous alleged activities of the Freedom Party, which were not found to be credible either. A decision to refuse international protection was therefore taken on the basis of the lack of visibility of BJ within the Freedom Party, in light of the available COI on this matter.

Scenario 1a: new membership card, same COI

In support of his second application, BJ repeats the statements made in his first application and **submits a membership card**, issued in his name by the Freedom Party. This membership card is linked to one material fact of his previous application. The card is therefore relevant. However, it is not enough to increase significantly the likelihood of qualifying for international protection, because it is not related to a matter of decisive importance. The card confirms a material fact that had already been accepted in the previous application, but does not call into question the previous assessment that his personal involvement and activities within the party are not established. No specific investigation on the probative value of the card is needed, as it would not lead to a different assessment.

The application is therefore found inadmissible.

All the relevant information relating to the general situation in the country of origin, as well as the particular circumstances of the applicant, must be kept in mind. When a fact has been accepted but initially deemed insufficient to establish a need for international protection, and then the general or particular circumstances have changed, it is necessary to bear this development in mind. This will allow an assessment of whether these general or particular

([102]) For more information regarding case officer's duty to investigate, refer to Section 1.1.1.b.2. of EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.

changes in the situation are significant enough to increase the likelihood of qualifying for international protection.

Scenario 1b: new membership card, changed COI
In support of his second application, BJ repeats the statements made in his first application and submits a membership card issued in his name by the Freedom Party. This membership card is linked to one material fact of his previous application. The card is therefore relevant. It is related to a matter that was not considered of decisive importance during the previous application. It confirms a material fact that had already been accepted in the previous application. However, in the meantime, the general situation in his country of origin has worsened, and the membership alone of an opposition party could lead, depending on personal circumstances, to a well-founded fear of persecution.

The relevant elements at hand are both a material fact that had already been accepted (and for which the applicant submits new evidence) and a new element that has come to the attention of the competent authority. Such elements support the fact that being a member of an opposition party may imply a well-founded fear of persecution; i.e. there is a change in the general political situation in the country of origin. The application is therefore declared admissible, depending on other personal circumstances.

If the new element is related to a material fact that had previously been rejected, the evaluation will have to focus on the decisiveness of the fact that it supports, as far as the assessment of the need for protection is concerned.

If the new element supports a key material fact that was questioned in the previous assessment because of its lack of credibility, or because the risk assessment had concluded that there is no need for international protection, one may consider that the element is still sufficiently important to increase, potentially, the likelihood of qualifying for international protection.

Scenario 2a: new statement from the party allegedly confirming the applicant's role therein
BJ files a statement from the Freedom Party concerning his involvement in the party and confirming his role as president of the youth wing. BJ repeats the statements he made in his first application. This element is relevant and could be considered to be related to an essential matter of the previous assessment, because it tends to establish his involvement in the party. The element is potentially decisive in the assessment of that involvement.

Scenario 2b: statement from the party about the applicant's role therein to be false
BJ files a statement from the Freedom Party concerning his involvement in the party, and repeats the statements he made in his first application. Based on the information already available to the authority, it appears that the Freedom Party does not issue this kind of statement, and that the author of the statement has not been in office for more than 10 years. This first examination of the document already shows that it does not significantly increase the likelihood of the applicant to qualify as a beneficiary of international protection.

If the element consists of documentary evidence that, after a first examination of the form and substance, can potentially change the assessment of a material fact that was rejected during the previous application, one may consider that the element increases significantly the likelihood to qualify for international protection ([103]). This may be the case even if the element's probative value needs to be checked through additional investigative measures.

Scenario 3: testimony from a non-governmental organisation (NGO)
BJ files a testimony from the NGO Rights for All to support his second application. The NGO states that the testimony is based on a mission to the city where BJ lived, during which the NGO investigated the situation of opposition political parties, including the Freedom Party. The author of the testimony recounts that they had the opportunity to meet BJ in the field, and gives details of the activities in which BJ participated while he was there.

The authority examining the admissibility of the application does not have any information at hand in relation to the NGO or the author. A first examination of the document reveals that the testimony is presented in its original version and is not limited to general assertions. On the contrary, it appears to be detailed. Therefore it may allow a possible different outcome of the assessment of the personal participation of the applicant in the Freedom Party, even though further investigation is needed. This document increases significantly the likelihood of BJ to qualify for international protection.

2.2.2. Relate to an inadmissibility ground previously applied

When the previous application has been rejected as inadmissible, the decision may have been based on one of the following grounds ([104]):

- another Member State has granted international protection to the applicant;
- a third country could be considered the first country of asylum for the applicant;
- a third country qualifies as a safe third country for the applicant;
- an international court has arranged safe relocation of the applicant to another country;
- the application was made later than seven working days after the issuance of a return decision.

In each of these cases, the previous examination did not focus on the situation in the applicant's country of origin, but rather on the specific inadmissibility ground applied.

For any subsequent application, the assessment will focus on whether the applicant presents new elements or new elements have arisen that allow the administration to evaluate whether the original inadmissibility ground remains justified.

([103]) The obligation to assess whether a document constitutes a new finding or element and, if so, whether it significantly increases the likelihood of the applicant qualifying for international protection before declaring the application inadmissible has been confirmed by the CJEU in *LH v Staatssecretaris van Justitie en Veiligheid*, paragraphs 44-45, see footnote 74.
([104]) Article 38(1) APR.

(a) Concept of first country of asylum ([105])

When the 'first country of asylum' concept was applied in the previous procedure, the assessment of the new application will focus on the new elements that relate to not considering that country as the first country of asylum for the applicant (Article 38(1)(a) APR). In some situations, the concept of first country of asylum may no longer apply in a specific case, for example: the refugee status was withdrawn by that third country; the applicant would no longer enjoy protection against *refoulement* if returned to that third country; the protection that the applicant would enjoy would not be sufficient due, among other things, to their vulnerability or to a discriminatory application of the law; the situation of the first country of asylum has changed and the applicant would not be safe in case of being returned there.

If the concept of first country of asylum no longer applies, the application should be declared admissible, as the risk of persecution and serious harm in the country of origin has not been assessed before by the determining authority and there has never been an examination on the substance of the application regarding the country of origin.

(b) Concept of safe third country ([106])

If the previous procedure concluded that a certain country would be a safe third country for the applicant (under Article 38(1)(b) APR), the new elements presented should relate to not considering that country safe with a view to the applicant's situation. To substantiate their claim, the applicant could, for example, state that: their life and liberty are threatened because of race, religion, citizenship, membership of a particular social group or political conviction; there is a risk of torture or inhuman or degrading treatment upon return to that country; they would be returned to their country of origin without their case being examined; the law of the third country has changed and they cannot apply for refugee status; the protection granted by that third country would not be effective ([107]).

If the determining authority considers that the concept of safe third country no longer applies, the application should be considered admissible as there has never been an examination on the substance of the application regarding the country of origin.

(c) Another Member State has granted international protection

If the previous application was found inadmissible because another Member State granted international protection (under Article 38(1)(c) APR), the new elements have to be related to the applicant's situation in the Member State that has already granted international protection. For example, that Member State may have withdrawn the international protection by means of a decision, or the applicant may find themself, because of their particular vulnerability, in a situation of extreme material poverty amounting to inhuman or degrading treatment due to the

([105]) For the concept of First country of asylum see Article 58 APR.
([106]) For the concept of Safe third country see Article 59 APR.
([107]) See also Judgment of the Court of Justice of 4 October 2024, *CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, paragraphs 35 to 56, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62022CJ0406_RES&qid=1770997765544&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4573.

existence of exceptional circumstances that are unique to them ([108]). If the new application is found admissible because of significant changes in the protection situation of the Member State that first granted protection, the application has to be examined on the merits.

(d) An international court or tribunal has provided safe relocation for the applicant to a Member State or third country

Under this new admissibility ground ([109]), an application for international protection may be rejected as inadmissible where an international criminal court or tribunal has provided safe relocation for the applicant to a Member State or a third country or is unequivocally undertaking actions to that effect.

In such cases, if the applicant submits a subsequent application, it may be considered admissible — and thus examined on the merits — if the applicant presents new relevant elements related to their current situation in the Member State or third country to which they were relocated.

Article 38(1)(d) APR identifies two specific scenarios in which such new elements may be taken into account:

a) new relevant circumstances have arisen that were not considered by the international court or tribunal at the time of the original decision; or
b) there was no legal possibility to present circumstances relevant to internationally recognised human rights standards before an international criminal court or tribunal.

Therefore, in assessing the admissibility of a subsequent application under this provision, determining authorities must verify whether either of these conditions is fulfilled, particularly in light of the applicant's situation in the country of relocation.

(e) The application was made later than seven working days from receiving a return decision

Under this new admissibility ground ([110]), an application for international protection may be rejected as inadmissible if the applicant was previously issued a return decision ([111]) and made their application more than seven working days after receiving that decision. This ground applies only where the applicant was duly informed of the consequences of failing to submit an application within that time limit, and no new relevant elements have arisen since the expiry of the seven-day period.

([108]) See also, by analogy, Judgment of the Court of Justice of 19 March 2019, *Abubacarr Jawo v Germany*, C-163/17, ECLI:EU:C:2019:218, paragraphs 79 to 99, https://eur-lex.europa.eu/legal-content/EN/SUM/?uri=CELEX%3A62017CJ0163_RES&qid=1770985441788. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=659.
([109]) Article 38(1)(d) APR.
([110]) Article 38(1)(e) APR.
([111]) In accordance with Article 6 Directive 2008/115/EC, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0115&qid=1770728065620.

If a subsequent application is submitted in such circumstances, the determining authority may nonetheless consider it admissible where the applicant presents new relevant elements. These may relate either to:

- the fact that the applicant was not properly informed of the consequences of missing the seven-day deadline, or
- the emergence of new relevant elements after the previous decision on admissibility, such as significant changes in the applicant's personal situation or in the conditions in their country of origin.

If the application is deemed admissible on this basis, the determining authority must proceed to assess the claim on its merits. This is because the previous procedure did not involve a substantive examination of whether the applicant qualifies for international protection under the relevant legal framework.

2.3. Conclusion of the preliminary examination

If the preliminary examination concludes that there are no new elements, an inadmissibility decision must be taken in accordance with the APR ([112]). If it is decided that a subsequent application is inadmissible and should not be further examined, the applicant must be informed of the reasons for such a decision and of the possibilities for seeking an appeal or review ([113]).

If the examination concludes that there are new elements that significantly increase the likelihood of the applicant qualifying as a beneficiary of international protection or relate to an inadmissibility ground previously applied, the application is deemed admissible and is further examined on its substance under the accelerated examination procedure ([114]). It is not required to issue a separate decision stating that the application is admissible, however the applicant needs to be informed about the stages of the procedure that are being followed ([115]). Under the APR, 'the substantive interview may be conducted at the same time as the admissibility interview, provided that the applicant has been informed of such a possibility in advance and has been able to consult with their legal adviser … or with a person entrusted with providing legal counselling …' ([116]). Therefore, when sufficient information is gathered during a preliminary examination interview, a decision on the merits can be made without any additional personal interview.

([112]) Article 38(2) APR.
([113]) Article 67(1)(a)) APR.
([114]) Article 42(1)(g) APR.
([115]) Article 8(2)(b) APR.
([116]) Article 12(1) APR.

3. Subsequent applications in particular situations

This chapter of the guide addresses the different situations/contexts in which a subsequent application may be submitted. There may be differences in the examination depending on the outcome of the first/previous application, or based on the specific elements of the subsequent application. The personal circumstances or the history of the applicant could have a significant impact on the preliminary examination procedure. It is therefore essential to identify these attributes as soon as the subsequent application is lodged.

3.1. Following a rejection of the previous application as unfounded

The most common situation in which a subsequent application is submitted is after a final decision to reject the previous application as unfounded, following an examination on its substance.

The previous application being rejected as unfounded means that examination of the substance of the case led to the conclusion that there is no need for international protection. In this situation, either the material facts identified were not accepted (they were found not to be credible) or, if they were accepted, the risk of being subjected to persecution or serious harm upon return was too low (only hypothetical or simply possible, for instance) or not established. The latter means that a generic risk was acknowledged but was not deemed to amount to a risk of persecution or serious harm; or it was estimated that there was a possible internal protection alternative, available protection by the national authorities or other such circumstance.

It is also to be noted that a subsequent application can be submitted when the applicant was granted subsidiary protection in the previous procedure. The decision to grant subsidiary protection is partly negative (partial rejection) insofar as the examination for refugee status resulted in a rejection. In these cases, relevant elements which relate to a fear of persecution which was not examined before can be regarded as a new claim. For more information regarding this, please see Section 2.1.6 New claim.

The competent authority for the examination of the subsequent application may thus rely on the substance of the previous examination if the new application is an extension of the facts or circumstances invoked during the previous application.

Applicants filing a subsequent application following a rejection of the previous application as unfounded may have made clearly inconsistent and contradictory, clearly false or obviously improbable representations in their previous application which contradicted sufficiently verified COI. In those situations, the grounds for their claim of being eligible for international protection within the meaning of the QR were clearly unconvincing. This has a negative impact

on their general credibility in the context of the examination of the admissibility of the subsequent application. The determining authority will have higher expectations with regard to the obligation of the applicant to substantiate their new claim, to verify whether the new elements increase the likelihood of being granted international protection.

3.2. Following a rejection of the previous application as manifestly unfounded

Related EUAA publication

For further details on the connection between evidence and material facts, see EUAA, *Practical Guide: Evidence and Risk Assessment*, January 2024, https://www.euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment

A subsequent application may be lodged after the determining authority has rejected the previous application as manifestly unfounded pursuant to Article 39(4) APR, having considered that one of the circumstances listed in Articles 42(1) and (3) APR applied to the unfounded application. The relevant specific circumstance should be defined as such in the national legislation in order to be applicable to the particular case.

If the applicant does not qualify for international protection, the application may be rejected as manifestly unfounded within the meaning of the APR after being examined in the accelerated examination procedure, for example, in the following cases:

- the applicant has not raised any material issues relevant to assessing their need for international protection;
- the applicant comes from a safe country of origin or from a third country for which the share of decisions granting international protection to applicants from that third country is 20 % or lower of the total number of decisions;
- the applicant has provided incorrect information or has submitted intentionally false information/documents about their identity and/or nationality;
- the applicant has in various ways tried to mislead the authorities in relation to whether they qualify as a beneficiary of international protection.

Not all the situations envisaged in Article 42(1) APR are immediately related to the applicant's fear of persecution or real risk of suffering serious harm in their country of origin. For instance, the Article also covers cases when an application is not submitted as soon as possible after entering the territory (lawfully or unlawfully), or is made merely to delay or frustrate the enforcement of an earlier or imminent removal decision. Only the circumstances directly linked to the assessment of the need for international protection that were applied to reject a previous application are relevant for the preliminary examination of the new application.

Therefore, the impact of a previous application rejected as manifestly unfounded on the subsequent application depends, on the one hand, on the circumstances that were applied in

the previous application and, on the other hand, on the new elements put forward by the applicant or that have arisen. Examples of relevant new elements include: new elements that are material to the qualification for international protection; personal circumstances making the country of origin unsafe for the applicant; reasons for providing incorrect/false information in the previous application; new evidence that strengthens the credibility of the applicant; and a review of the applicant's situation in relation to national security/public order.

3.3. Following the granting of international protection by another Member State

When an applicant has already been granted international protection by another Member State, the determining authority should assess the relevant elements of the situation in that Member State. The examination should be guided by the principle of mutual trust, assuming that the other Member State complies with fundamental rights and provides the necessary rights to beneficiaries of international protection in accordance with Chapter VII QR.

The preliminary examination should focus on determining whether there are new elements pointing to severe shortcomings in the provision of protection or individual circumstances that would expose the applicant to a serious risk of suffering inhuman or degrading treatment. According to the CJEU, the threshold for meeting this criterion is relatively high, requiring more than just a situation characterised by a high degree of insecurity or significant degradation of living conditions. The CJEU has explicitly stated that the mere fact that social protection and/or living conditions are more favourable in another Member State cannot constitute a substantial ground for believing that the applicant would be exposed to a real risk of inhuman or degrading treatment. This criterion may be met in cases of extreme material poverty resulting from the indifference of the authorities of a Member State irrespective of the applicant's wishes and personal choices. ([117]) Case officers must take into account both objective conditions and individual circumstances. If the applicant can present elements showing that there is a risk of such a situation in the Member State that previously granted international protection, then the application is to be found admissible and examined under the accelerated procedure. If the determining authority comes to the conclusion at the end of this examination that the protection is effective in that Member State, the application should be rejected according to Article 38(1)(c) APR.

3.4. Following the withdrawal of an application

Following the withdrawal of an application, the determining authority can either declare the application implicitly or explicitly withdrawn ([118]), or reject the application on the basis of an adequate examination of its substance where the determining authority had found already at the time of the withdrawal that the applicant does not qualify for international protection ([119]).

([117]) See *Abubacarr Jawo v Germany*, paragraphs 79 to 99, footnote 108.
([118]) Articles 40(1) and 41(1) APR.
([119]) Articles 40(4) and 41(5) APR.

With regards to the situation in which the application may be considered implicitly withdrawn the determining authority also may suspend the procedure to give the applicant the possibility to justify the omissions set out Article 41(1) APR ([120]).

It is worth mentioning that the withdrawal of the application during a previous examination does not necessarily indicate that the applicant does not qualify for refugee or subsidiary protection status when they lodge a subsequent application. The applicant may submit a new application because new elements have occurred since the previous application was withdrawn either explicitly or implicitly. For example, the situation in the country of origin has seriously deteriorated due to political or legislative changes or due to violent confrontations, or the personal circumstances of the applicant may have changed (e.g. their right of stay in the Member State has ended and they risk being returned).

3.4.1. The previous application was declared as explicitly or implicitly withdrawn

If an application was declared explicitly or implicitly withdrawn, the elements presented in that application were not considered by the determining authority at the time of the previous application. In line with Article 55(5) APR ([121]), any subsequent application submitted after the previous application was declared as explicitly or implicitly withdrawn, is considered to contain new elements and is, as such, to be considered admissible and examined under the accelerated procedure because these elements were never assessed by the determining authority.

Moreover, it should be borne in mind that a person with protection needs may abandon the application for a variety of reasons unrelated to the merits of their application. In any case, these are elements that need to be taken into account during the examination on the merits.

3.4.2. The previous application was rejected as unfounded or manifestly unfounded

Even when an application was withdrawn explicitly or implicitly, the determining authority may have rejected the application as unfounded or manifestly unfounded if the determining authority had already found at that time that the applicant does not qualify for international protection ([122]). When a decision has become final, any following application by the same person will be considered a subsequent application under the APR and be subject to a preliminary examination in which the case officer will establish whether new elements have arisen or have been presented. Therefore, deciding the application on the merits, even when there is implicit, but also an explicit withdrawal, will subject the following application to the admissibility examination, and will thus discourage applicants from repeatedly withdrawing and resubmitting the application.

([120]) Article 41(4) APR.
([121]) Article 55(5) APR only refers to implicit withdrawals. However, there are no substantive differences between the situation of an implicit withdrawal and an explicit withdrawal, which would justify a deviating approach when the previous application was declared explicitly withdrawn.
([122]) Articles 40(4) and 41(5) APR

3.4.3. The application was suspended

In situations of an implicit withdrawal, Member States may have suspended the procedure to give the applicant the possibility to justify or rectify omissions set out in Article 41(1) APR.

If the determining authority decided to suspend the procedure and the applicant managed to rectify the omissions, the application will not be subject to the admissibility examination for subsequent applications and will be assessed within the initial application under the general procedural rules of the APR. Any application made within the timeframe of the suspension should be treated as a further representation and be taken into account within the previous application.

Member States may provide in their national law the procedural rules for the suspension of the procedure, especially the rules governing the timeframe and how the applicant can justify or rectify the omission.

3.5. Following a rejection based on an exclusion ground

A subsequent application lodged after a decision to reject the application for international protection that applies an exclusion ground ([123]) must, in principle, be of such a nature that it can alter the exclusion assessment. During the exclusion assessment, the burden of proof to show that there are serious reasons for the applicant to be excluded lies with the asylum authorities. This is why the new elements of a subsequent application following an exclusion decision, have to demonstrate that the grounds on which the reasoning of the determining authority was based were erroneous or are no longer applicable to the applicant's situation. In the subsequent application, it is not sufficient to challenge the reasoning. There must be new elements showing that the reasoning was not or is no longer valid. This may be the case, for example, when the applicant can prove that the asylum authority mixed up identities or when they were excluded based on information relating to their participation in a serious crime of which they have then been acquitted, or when the crime for which the applicant was excluded is not considered serious anymore or in cases of rehabilitation or sentence served ([124]). Any elements (further) substantiating the fear of persecution / serious harm will not affect the initial exclusion decision, except in the case of exclusion from subsidiary protection. In particular, if the applicant has been excluded from being eligible for subsidiary protection because they have been convicted for a serious crime after arrival in the country of asylum ([125]) or because they are a danger to the community or to the national security ([126]), the new elements may

([123]) Pursuant to Article 12 or Article 17 QR.
([124]) For more information see Judgment of the Court of Justice of 30 April 2025, *KL v Galte*,C-63/24, ECLI:EU:C:2025:292, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62024CJ0063_RES&qid=1770998382084&rid=1. Summary available on the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=5009.
([125]) Article 17 (1)(b) QR.
([126]) Article 17 (1)(d) QR.

relate to the qualification of the applicant as a refugee and not to the past exclusion assessment.

For further details on how to assess whether the new elements that have been presented by the applicant or have arisen increase significantly the likelihood of the applicant qualifying for international protection, see Section 2.2 What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean.

3.6. Following the withdrawal of international protection status

This section deals with the situation in which an applicant submits a new application after a decision has been taken to withdraw their international protection status ([127]). The decision to withdraw international protection is not considered a final decision under the definition of Article 3(8) APR, because it does not relate to the granting of international protection. However, the preceding decision to grant international protection is a final decision. For this reason, an application submitted following the withdrawal of international protection status is treated as a subsequent application. In such cases, the preliminary examination must relate to any new elements that have emerged since the decision to grant international protection was issued in the first place. The examination will follow the rules outlined in the Chapter 2 'Preliminary examination'.

These new elements may relate to:

- the original grounds for protection (and therefore be linked to the withdrawal), or
- a new ground for which the applicant may now qualify for international protection.

If the new elements are related to the original ground for protection and the withdrawal of that protection, a distinction can be made depending on the grounds for the withdrawal decision.

3.6.1. Cessation

If a new application is lodged by an applicant for whom a decision to withdraw international protection based on cessation grounds has been taken ([128]), the previous decision to grant international protection will be the starting point for assessing the admissibility of the subsequent application. In this situation, the previous decision is called into question for one of the two reasons below.

- **The applicant's own behaviour**. The applicant has voluntarily re-availed themself of the protection of the country of nationality; has lost their nationality or has voluntarily reacquired it; has acquired a new nationality and enjoys the protection of the country of the new nationality; or has voluntarily re-established themself in the country they left or outside which they remained owing to a fear of persecution.

([127]) Articles 14 and 19 QR.
([128]) Article 11 or Article 16 QR.

- **Changed circumstances**. The circumstances in connection with which the applicant has been recognised as a refugee may have ceased to exist; the applicant can no longer continue to refuse to avail themself of the protection of the country of nationality; being a stateless person, the applicant may return to the country of former habitual residence because the circumstances in connection with which they were recognised as a refugee have ceased to exist; or the circumstances that led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

The admissibility examination will thus focus on the ability of the new elements to significantly increase the likelihood that the withdrawal decision will not apply or no longer applies, or that there are new grounds for the applicant to qualify for international protection. Consequently, these new elements could relate to the material elements that led to the withdrawal of the international protection initially granted (the applicant may wish to establish that the reasons for which they were considered to have ceased to fulfil the conditions for the granting of international protection may be called into question in light of the new elements they submit in support of their subsequent application); or the new elements could be linked to facts or circumstances different from those that led to the initial granting of international protection.

For further details on how to assess whether the new elements that have been presented by the applicant or have arisen significantly increase the likelihood of the applicant qualifying for international protection, see Section 2.2 What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean.

3.6.2. Withdrawal of international protection

(a) Misrepresentation or omission of facts or circumstances

If a decision to withdraw international protection has been taken ([129]) because of misrepresentation or omission of facts or circumstances, including by using false documents in the previous procedure, the applicant is considered never to have been a refugee or a beneficiary of subsidiary protection, because they obtained international protection but were not entitled to it.

In this case, the examination of the admissibility of a new application will focus on the ability of the new elements to significantly increase the likelihood of reviewing the withdrawal decision, or to prove that there are new grounds for the applicant to qualify for international protection. The new elements could relate to the material elements that led to the withdrawal of the international protection initially granted. For instance, the applicant may wish to establish that the reasons for withdrawal were erroneous and submits new elements to support their point of view. Or the applicant may aim to prove that elements that were previously considered fraudulent are actually not fraudulent and puts forward other pieces of evidence to this end.

The new elements could also relate to facts or circumstances different from those that led to the initial granting of international protection.

([129]) Pursuant to Article 14(1)(c) or Article 19(3)(c) QR.

For further details on how to assess whether the new elements that have been presented by the applicant or have arisen significantly increase the likelihood of the applicant qualifying for international protection, see Section 2.2 What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean.

(b) Exclusion

If a new application is lodged by an applicant for whom a decision to withdraw international protection has been taken because they should have been or are excluded, the admissibility examination will focus on the ability of the new elements to significantly increase the likelihood of reviewing the exclusion decision. Since the applicant has already been excluded from international protection, the new elements will have to relate to the reasons for exclusion and provide grounds for the reconsideration of that decision.

In this case, the applicant is considered not to be a refugee or a beneficiary of subsidiary protection because they had obtained international protection but they were not (or are no longer) entitled to it. For further details, see Section 3.5 Following a rejection based on an exclusion ground.

(c) Withdrawal of refugee status – danger to security or final conviction for a particularly serious crime

When a new application is lodged by an applicant for whom a decision to withdraw the refugee status has been taken because there are reasonable grounds for regarding them as a danger to the security of the Member State in which they are present or because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of that Member State, it must be kept in mind that the applicant continues to be a refugee for the purposes of, inter alia, Article 1A of the Refugee Convention, in spite of the withdrawal of their status ([130]).

The admissibility examination will thus aim at assessing whether the new element can increase the likelihood of overturning the previous decision that considered the applicant as a danger to the security of the Member State or to the community of that Member State, and whether it is therefore possible to grant the applicant refugee status. More precisely, in this case the applicant has not ceased to be a refugee but has lost their refugee status by means of a final withdrawal decision. This status can only be regained if the person is no longer considered a danger to the security or to the community of the Member State.

In some cases, when assessing the admissibility of the new application, it may be found that the elements that existed when the need for international protection was initially considered do not exist anymore. Hence, during the preliminary examination it is necessary to keep an eye on any new elements or new facts or circumstances ([131]) that have been submitted by the

([130]) For more details see: Judgment of the Court of Justice of 14 May 2019, *M and Others v Ministerstvo vnitra, and X, X v Commissaire général aux réfugiés et aux apatrides*, C-391/16, C-77/17 and C-78/17, ECLI:EU:C:2019:403, paragraphs 99 and 110, https://eur-lex.europa.eu/legal-content/SUM/?uri=CELEX:62016CJ0391_RES&qid=1770998550024&rid=1. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=722.

([131]) For the new elements, see also the case-law box on *A.A. v Germany*.

applicant or are available to the authority in charge of the examination, showing a change in the personal circumstances of the applicant ([132]). For instance, it may appear that the applicant has ceased to be a refugee as a result of their behaviour or due to a change in circumstances.

Nota bene

The guidance above may be applied mutatis mutandis to the refusal to grant refugee status in accordance with Article 14(2) QR.

For further details on how to assess whether the new elements that have been presented by the applicant or that have arisen significantly increase the likelihood of the applicant qualifying for international protection, see Section 2.2 What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean.

3.6.3. Absence of a beneficiary for international protection during the withdrawal process

A written statement and an interview are necessary before any decision to withdraw international protection is taken ([133]). However, it may happen that the beneficiary of international protection does not submit a written statement or does not appear for the interview or the hearing. This may be due to a variety of factors, ranging from a problem regarding the address of the beneficiary (e.g. the interview invitation or the invitation to submit a written statement has been sent to an address where the person concerned no longer receives mail), to a stay abroad for a short or longer period, to a return to the country of origin etc. The determining authority can take the decision to withdraw the international protection status of a beneficiary of international protection who did not show up at the interview or failed to reply to the invitation notice, only if it has sufficient conclusive evidence to that end. But the validity of such a decision can be challenged by means of an appeal to the appeal body, if the applicant lodges such an appeal in due time.

If the applicant submits a subsequent application, the examination of admissibility will have to cover the elements invoked by the applicant to justify their continued need for international protection. Since there was no written statement or interview or hearing prior to the decision to withdraw international protection, subject to the provisions of the national law, it is likely that an interview will have to be conducted in order to assess whether the elements put forward are such as to significantly increase the likelihood that the ending of the international protection status can be overturned. For further details, see Section 2.2 What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean.

([132]) In accordance with Article 11 QR.
([133]) Article 66(1) APR.

3.7. While an appeal against the decision concerning the previous application is still pending

Until the decision on a previous application becomes final, any new elements presented under a (potential) subsequent application must be assessed in the ongoing appeal procedure ([134]). In accordance with the APR new facts or evidence must be introduced into the pending appeal procedure since the appeal body has the obligation to provide for a full and *ex nunc* examination of both facts and points of law. All further representations need to be submitted at this stage, until the proceedings are closed.

When applications are received by the competent authority ([135]), this authority should check whether the previous procedure is still pending, either before the determining authority or before the appeal body or in another Member State. If the previous procedure is still pending (which may also include, when the national law so allows, the situation in which the hearing has already been conducted at the appeal stage), the applicant should be informed that the new elements must be submitted to the authority that is currently examining the pending application and no subsequent application should be registered.

3.8. Repeated subsequent applications

The APR does not provide any limitation as to the number of applications for international protection that one individual may present in a lifetime. This applies irrespective of the reasons why the applicant requests that a further substantive examination be carried out.

However, the burden that repeated subsequent applications create on Members States has led to some limitations being established in order to avoid the abusive use of the right to apply for international protection numerous times so as to remain on the territory of a Member State. This is the case, for example, when applicants 'split' the reasons for their application for international protection and/or partially mention facts or present evidence through multiple separate applications that are submitted gradually over time. More concretely, they may deliberately choose not to present elements/evidence in the ongoing administrative or judicial procedures in order to use such elements/evidence at a later stage, to be able to initiate new proceedings if the initial procedure results in a negative decision. The overall goal could be to break through the validity or *res judicata* nature of the decisions and, at least, to extend their right to remain. This conduct breaches the applicants' legal obligation to submit as soon as possible all the elements needed to substantiate the application for international protection and to cooperate with the competent authorities with a view to establishing their identity and other elements, as referred to in Article 4(1)(2) QR, during the examination of their application.

In these cases, as pointed out in Section 2.1 What are 'new elements'?, the determining authority has to assess whether the elements that were put forward by the applicant could have been submitted during the previous procedure. In other words, it is examined whether

([134]) Article 55(1) APR.
([135]) Article 4 APR.

'the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application' ([136]). If the case officer concludes that the applicant was capable in this regard, the application may be rejected as inadmissible, unless these elements significantly increase the likelihood of the application not being inadmissible or of the applicant qualifying for international protection.

In cases of repeated subsequent applications, Member States may also derogate from the right to free legal counselling ([137]) and the right to remain on the territory. For more information on this matter, see Section 1.4 The right to remain in case of subsequent applications.

3.9. After the rejected applicant has left the territory of the Member States

In cases where an applicant whose previous application for international protection was unsuccessful has left the territory of the Member States and temporarily returned to their country of origin, and subsequently re-enters the territory of the Member States to submit a new application, this application is considered a subsequent application.

If the applicant re-enters the same Member State, the subsequent application will be examined by that Member State. If the applicant re-enters another Member State, that Member State must determine first which Member State is responsible and transfer the applicant accordingly, unless the responsibility has ceased in the meantime (see Section 3.10.3(c) Cessation of responsibility).

In such situations, the determining authority of the Member State responsible should, inter alia, assess whether the applicant provides information that is considered sufficient to establish that they indeed returned to their country of origin and to substantiate the facts or events that occurred during that return (see Section 2.2 What 'significantly increase the likelihood' and 'relate to an inadmissibility ground previously applied' mean"). The mere fact that a rejected applicant previously left the territory of the Member States is in itself not automatically a new element that significantly increases the likelihood of the applicant to qualify as beneficiary for international protection requiring a decision on admissibility.

For example, where an applicant claims in a subsequent application that they were persecuted by their government upon return for the same reasons that were not accepted during the assessment of the previous application, this claim should be assessed during the preliminary examination. If the applicant presents an individual threat, it is recommended that a personal interview be conducted as part of the admissibility examination, where this is provided for or permitted under national law.

For the purpose of this assessment during the preliminary examination, it is irrelevant whether the applicant returned to their country of origin voluntarily, in compliance with an order to leave the territory, or was forcibly returned, for example through removal.

([136]) Article 55(5) APR.
([137]) Article 16(3)(a)(b) APR.

3.10. After the determination of the Member State responsible

3.10.1. The Asylum and Migration Management Regulation

This part of the guide explores the interaction between responsibility determination and subsequent applications.

As discussed above, a new application made before a final decision should be considered as further representations and be included in the examination of the application by the Member State responsible. A new application after a final decision is a subsequent application and will again be examined by the Member State responsible. Therefore, when a new application is made, it is necessary to find out the Member State responsible. The criteria and mechanisms for determining which Member State is responsible for examining an application for international protection are set out in the AMMR.

As soon as an application for international protection is registered in a Member State by a third-country national or a stateless person, that Member State considers that another Member State is responsible for examining the application under the AMMR and whether a transfer to that Member State is possible. Another Member State could be responsible for examining an application for international protection, inter alia, when a family member has already lodged an application in that Member State or when the applicant irregularly entered the territory of the Member States via the external border of that particular Member State ([138]).

A Eurodac hit, pursuant to Articles 15 and 27 Eurodac Regulation, can serve as proof that an applicant has previously registered an application for international protection in another Member State. In these cases, a Member State will submit a take back notification to the Member State responsible in which the application had previously been registered. After the confirmation of such a notification by the requested Member State, the person concerned will be transferred to the Member State responsible by the determining Member State. After a transfer, a situation may arise in which the applicant lodges a subsequent application in the responsible Member State. The application is then considered as subsequent application in the Member State responsible and will be examined as such. For further details on this matter, refer to upcoming edition of EUAA *Practical guide on the implementation of the AMMR: Personal interview and evidence assessment*.

([138]) For the detailed list of the criteria for determining the Member State responsible see Chapters II and III of Part III AMMR.

3.10.2. Subsequent application in the Member State responsible

The Member State responsible for examining the application for international protection must take back an applicant or a third-country national / stateless person who has applied for asylum in another Member State or is present there without a residence document, where it has been determined as the Member State responsible under Article 16(1) Eurodac Regulation.

The Member State is also obliged to take back an admitted person who has made an application for international protection or who is irregularly staying in a Member State other than the Member State which accepted to admit them in accordance with Regulation (EU) 2024/1350 ([139]), or which granted international protection or humanitarian status under a national resettlement scheme ([140]).

(a) Application still under examination

If the application in the Member State responsible is still under examination, i.e. there is no final decision yet, following a successful transfer, the Member State responsible will examine or complete the examination of the application for international protection in accordance with the APR ([141]). In this case, there is no subsequent application being lodged by the applicant, but a further representation (see Section 1.1.3 Making further representations) ([142]).

(b) Application rejected

When a first application is rejected with a final decision in the Member State responsible and the person concerned is successfully transferred back there under the AMMR, a new application in that Member State responsible will be considered a first subsequent application. As a result, it would have to be examined whether the requirements in Article 55(3) APR are met.

However, the Member State responsible is not obliged to examine the application made in the other Member State. This means that the applicant should present the new elements submitted in the other Member State to the determining authority of the Member State responsible ([143]).

3.10.3. Subsequent application in the requesting Member State

There are instances in which a transfer in accordance with the AMMR cannot take place for various reasons, which can ultimately result in the shift of responsibility to the Member State that requested/notified that the person concerned be taken back in the first place (the 'requesting/notifying Member State'). This shift in responsibility must be marked in Eurodac ([144]).

([139]) See footnote 20.
([140]) Article 36(1)(c) AMMR.
([141]) Article 36(3) AMMR.
([142]) Article 55(1) APR.
([143]) See Recital 76 APR.
([144]) Article 37(1) para. 2 AMMR

In this case, if the decision in the requested or notified Member State is final, the Member State that has become responsible (the requesting or notifying one) will treat the application as a subsequent application. If the decision is not final or has not been made yet, the Member State responsible will treat it as a further representation ([145]).

This would require the requested/notified Member State to send the information about the file.

(a) Shift of responsibility following an appeal against an AMMR transfer decision

The person concerned ([146]) has the right to an appeal against or to request a review of ([147]) a decision of the requesting/notifying Member State to transfer them to the responsible Member State ([148]). While an appeal is pending before the court or tribunal, depending on the national law / practice, it is possible to register a new application for international protection, but it will not be processed until a final decision has been taken by the competent appeal body ([149]).

A final decision of the competent appeal body can lead to a shift in responsibility from the requested/notified Member State to the requesting/notifying Member State, for example because it is not possible to transfer the person concerned to the Member State responsible ([150]). In such a case, the person concerned has their application for international protection examined by the requesting/notifying Member State as the newly responsible state under the AMMR.

(b) Time limits for AMMR transfers

If the person concerned is to be transferred to the responsible Member State, time limits set out in Article 46 AMMR apply within which the transfer needs to be carried out. These time limits aim to ensure that the person concerned ultimately has swift access to the asylum procedure in one of the Member States. Starting from confirmation of a take back notification, or from the final decision on an appeal where suspensive effect was granted, the notifying Member State has 6 months to transfer the person concerned ([151]) to the Member State responsible. There are exemptions to this rule ([152]), for example the time limit can be extended up to three years if the person concerned is imprisoned, absconds or is physically resisting the transfer, or is intentionally making themself unfit for transfer.

If the time limits are not complied with, the responsibility will shift to the notifying Member State and the rules regarding the examination of a subsequent application will apply in case the decision taken by the notified Member State has already become final.

([145]) See Section 1.1.3 Making further representations.
([146]) Article 36(1)(a)(b)(c)
([147]) Article 43 AMMR.
([148]) Article 42 AMMR.
([149]) It should be noted that some Member States explicitly exclude the possibility to lodge a new application for international protection while an appeal or review is ongoing.
([150]) Article 16(3) AMMR.
([151]) Article 46(1) AMMR.
([152]) See, Article 46(2) AMMR.

(c) Cessation of responsibility

If the applicant has left the territory of the Member States for at least 9 months or in compliance with a return decision or removal order, the requested Member State is no longer responsible unless the person concerned is in possession of a valid residence document issued by that Member State responsible ([153]).

If the person then comes back to the EU territory and applies for international protection, the Member State responsible will be determined anew.

Practical example

Case scenario: re-entry into the requesting Member State after transfer and registration of an application for international protection in the same Member State.

If a new application for international protection is registered after the AMMR responsibility determination procedure was successfully completed with a transfer to the Member State responsible and the person re-enters the requesting Member State, a new take back notification should be sent to the Member State responsible. After this notification is confirmed, a new AMMR transfer decision should be issued as the previous transfer decision has become obsolete as a result of the transfer successfully taking place.

If in the meantime the responsibility has ceased based on the grounds mentioned in the Section (c) 'End of responsibility' above, after the transfer to the Member State responsible, and if no other Member State can be determined to be responsible for the examination of the application for international protection based on the criteria in the AMMR, the application should be examined in the Member State at hand.

([153]) Article 37(4) and (5) AMMR.

Publications Office
of the European Union